

No. 14588

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.

ADOLPH G. SUTRO,
Appellee.

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Appellant,
vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record
In Two Volumes

Volume II
(Pages 313 to 690)

Appeals from the United States District Court for the
Southern District of California,
Southern Division.

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PAUL P. O'BRIEN,

CLERK

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ADOLPH G. SUTRO

called as a witness in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

Redirect Examination

By Mr. Cranston:

Q. Mr. Sutro, you have heard some of the cross-examination of Mr. Anderson in connection with the growing of black-eyed beans. I will ask if at any time during the period in question you endeavored to secure permission to grow black-eyed beans? A. Yes.

Q. Were you successful? A. No.

Mr. Abbott: I object to this, your Honor. The question is not whether Mr. Sutro secured permission from an unidentified person, but what the law provides, and I think the regulations speak for themselves here. I don't know to whom he applied. But we may look to the face of the regulations to determine what could or could not be grown on such a property.

The Court: Is there any question about that at all, as a matter of fact, on the record made to date? If there is, that is the question.

Mr. Abbott: It is my understanding—I will have to turn to the regulations to get the exact language, but it is [1002] my understanding there is nothing there that prohibits the use of the land for the growing of black-eyed beans.

The Court: At any time during the period?

(Testimony of Adolph G. Sutro.)

Mr. Abbott: Yes, your Honor. If counsel has that regulation here, I am sure I could find it.

Mr. Cranston: I believe, your Honor, as to Mr. Sutro, if he requested permission from the proper authorities and was denied it, regardless of the regulations, that certainly would affect the rental value on the use of the property.

The Court: No, I think it is a question of the validity of a regulation or law, not what some individual says, and Mr. Sutro isn't the type of a man to rest his property rights upon any such a situation. I didn't think there was any question about the wording, the verbiage of this regulation that is in question.

Mr. Abbott: Is it the court's recollection that the regulation would permit the growing of the beans?

The Court: No, it is not. It is to the contrary. Now, that is not an infallible situation. It is a long time ago since I remember of hearing that regulation read, or reading it.

Mr. Abbott: The regulation is in the record. The clerk may have the exhibit.

The Court: Yes, I think it is in the record. I don't remember the number. [1003]

Mr. Abbott: I have a copy of it here, but it might take a moment or two to find it.

The Court: You have all of the exhibits here?

The Clerk: I think so, your Honor. From the previous hearing?

The Court: From the San Diego hearing.

(Testimony of Adolph G. Sutro.)

The Clerk: Yes. I have quite a number—I have four or five folders here.

Mr. Cranston: Would the court permit me to inquire as to what the facts were as to Mr. Sutro's requests for permission?

The Court: I don't know what the record will be. I presume they will object to it. I don't know, because they have been objecting a great deal. If they do, I want to know what the regulation is before the ruling is made.

Mr. Abbott: I have received further information on that, your Honor. Apparently, the regulation permits the use of pre-irrigation on black-eyed beans, which, agriculturally speaking, is an assurance of the equivalent of rainfall, and makes the growing of the crop feasible; but the water which does not meet the standard of Rule 4 of the regulations can be used for that purpose.

The Court: Very well. Then there is no use in asking your question, if that is the case.

Mr. Cranston: Of course, my understanding is contrary [1004] to Mr. Abbott's, and I think we are entitled to show——

The Court: You had better get the regulations, I think.

Mr. Abbott: It is in the record, I think, and we can get the regulations.

The Court: I don't mean now. You can look it up, can't you, and ask him some other questions you think are necessary to be asked in the case?

Mr. Cranston: Yes.

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Cranston): Mr. Sutro, do you have an opinion as to the rental value of your property during the years 1946 to 1953? A. I do.

Q. On what is that opinion based?

A. On conversations with landlords and tenants——

Q. In the neighborhood?

A. ——renting comparable property in the neighborhood.

Q. Will you state what investigation you made in this connection?

A. You mean who I talked to, what was the conversation—or, would you tell me just what——

Q. Yes, if you will state the investigation that you made, to whom you spoke, and what information you received.

The Court: Is this another memorandum you have, Mr. Sutro?

The Witness: Yes, your Honor. I always write these [1005] things down.

The Court: They will be asking for it.

The Witness: Well, I don't know what I can do.

Mr. Abbott: We will try to be brief, your Honor.

The Court: That is all right.

(The document was handed to counsel.)

Mr. Cranston: Madam Reporter, if you will read the pending question.

(The question was read.)

Mr. Weymann: If the court please, that is ob-

(Testimony of Adolph G. Sutro.)

jected to. This is a lay witness testifying as to information received from other parties. He may testify that he made the investigation, and that his opinion is based upon that, but he is not in the position of an expert who forms an opinion based on an investigation. He is presumed to know the value of his own property, and I think that is as far as he can go.

Mr. Cranston: If the court please, I believe that he is entitled, as the owner of the property, not only to state what it is, but to state the factors which have induced him to reach that opinion.

The Court: The only matter of doubt in the court's mind is as to whether—and I don't remember of having reviewed it before—the owner of the property, who is not offered as an opinion witness in the sense that he is classified as an expert, can testify on direct examination, and it is [1006] proper for him to state the persons with whom he conferred. These are very narrow rules in condemnation cases. I don't know whether the same rule would apply in a federal Tort Claims case or not. I have some doubt about it.

What is your basis for the objection?

Mr. Weymann: Well, the basis for the objection is this fact: that the only reason that I have been able to discover that an owner may testify as to the value of his property is that he is presumed to know the value of the property, and he cannot base his opinions on investigations and statements of other people. I have never known that to be used in

(Testimony of Adolph G. Sutro.)

any question of valuation as far as the owner is concerned. He is in an entirely different category from an expert witness.

The Court: I do not see how the mere expression in monetary figures would help the court at all, because on cross-examination you will be asking him those various things, as to whom he talked, and so forth, or if he saw John Doe and that he made a certain leave at such and such a time.

Now, if that is a subject matter for the purpose of testing the weight of his opinion—I am not speaking now of a condemnation case; I am speaking of a Tort Claims action, where it is a suit for money damages, and where the owner, as such, has a right to testify as to what he thinks is the proper measure of his damages. I am inclined to think that he has a right to state the basis. I am not talking about [1007] identifying the individuals, although I can see how on that it may be proper for him on direct examination to mention those specific persons or entities which he contacted, because that is a factor that will go to the value of his opinion.

It certainly is not a rule that because a man owns property, ipso facto, he is entitled to great weight, because it is a question of the weight of the evidence whether he be the owner, or whether he be some expert who is called to testify on the question of the value of the property.

Now, if the opinion, and that is all it is, a mere matter of opinion, whether it be the owner or an expert witness—if the opinion is to be measured by

(Testimony of Adolph G. Sutro.)

what he did in his investigation, or what you call the analyses, I do not see why he cannot state what investigation he made.

I am not now sure about his telling who the individuals were that he talked to, because it seems to me and I have always thought that that was rather an insecure matter on cross-examination, because each side picks out the individuals that they think are the worthwhile persons to talk to about those matters, and there on one side you have John Doe and Jane Smith, and on the other Sarah Emerson and somebody else.

In most cases in condemnation suits they do not appear, so that the trial judge can see them and hear them testify. I am confident that in condemnation cases there is a restriction on the ruling as to whether it is direct evidence [1008] or whether it is cross-examination.

Now, I think it is getting to the hour of adjournment. I think I will take it under advisement, think it over and do a little research on it. Do you have any authorities to cite?

Mr. Cranston: I could find no authorities involving a Federal Tort Claims Act.

Mr. Weymann: I have just one idea, your Honor, in that connection. Of course, the opinion of an expert witness on the state of his investigation is one of the exceptions, recognized exceptions, to the hearsay rule.

Now, I doubt if this witness is permitted to testify that he conferred with John Jones and John Jones told him it was worth so much per acre. I

(Testimony of Adolph G. Sutro.)

don't know whether your Honor has that in mind, the names and the amounts, but that I think would come within the exception to the hearsay rule. I just wanted to amplify my objection in that respect.

The Court: As I say, I think I will think it over during the night.

Is this the regulation you have in mind?

Mr. Abbott: Yes, your Honor; I assume it is. It looks like it from here. I think we can point out the language.

The Court: You can leave the stand, Mr. Sutro.

Mr. Abbott: Yes, your Honor. I call the court's attention and counsel's attention to Rule 3:

"Effluents of septic tanks, Imhoff tanks or [1009] of other settling tanks or partially disinfected effluents of sprinkling filters or activated sludge plants or similar sewages, shall not be used to water any growing vegetables, garden truck, berries, or low-growing fruits," etc.

Now, we will introduce evidence at a later time to the general effect that black-eyed beans can be grown feasibly, economically, and with a reasonably high degree of safety by pre-irrigation, and that that practice is widely followed with water that does not meet the standard of Rule 4, but only meets the provisions of Rule 3, which cover the provisions for the growing of vegetables under pre-irrigation, which is the practice which we described.

The Court: What do you mean by "pre-irrigation"?

(Testimony of Adolph G. Sutro.)

Mr. Abbott: The land is thoroughly irrigated prior to the planting of the seed.

The Court: It is prepared for the planting?

Mr. Abbott: Yes.

The Court: I don't know. I will think that over also. That is Exhibit 1 in the case.

Now, tell me how much more time you are going to consume in the plaintiff's case.

Mr. Cranston: Your Honor, we will have the testimony of Mr. Sutro as to the value which I mentioned, and we will have his testimony concerning the building plans and specifications, [1010] which presently are in the possession of the defendants for their further examination.

Then we will have some testimony in regard to how he has determined what farm equipment and machinery is necessary. We will then have a witness as to the farm machinery, and a witness on the valuation, or, I should say, the increase in building costs.

That would be Mr. Sutro and two other witnesses. I do not see that that testimony can all go in tomorrow, but we should be able to finish the plaintiff's case on Thursday, that is, allowing for cross-examination and the opportunity for objections. I do not see how it can all go in tomorrow.

The Court: Can you finish by Thursday noon?

Mr. Cranston: I think we would finish, and I would hope to finish by Thursday noon, but I cannot guarantee it. I would say that we would finish by Thursday afternoon.

(Testimony of Adolph G. Sutro.)

The Court: We will do the best we can.

Mr. Cranston: I assure your Honor I am as anxious to get this concluded as anyone.

The Court: 10:00 o'clock tomorrow morning, gentlemen.

(Whereupon, at 4:40 o'clock p.m., Tuesday, March 2, an adjournment was taken until 10:00 o'clock a.m., Wednesday, March 3, 1954.)

Wednesday, March 3, 1954—10:00 A.M.

The Court: Proceed, gentlemen.

ADOLPH G. SUTRO

the plaintiff herein, having been heretofore duly sworn, resumed the stand and testified further as follows:

Redirect Examination (Continued)

The Court: Is there a question pending, Mrs. Zellner?

(The record was read by the reporter as follows):

“Q. (By Mr. Cranston): Mr. Sutro, do you have an opinion as to the rental value of your property during the years 1946 to 1953?

“A. I do.

“Q. On what is that opinion based?

“A. On conversations with landlords and tenants——.

“Q. In the neighborhood?

(Testimony of Adolph G. Sutro.)

“A. —renting comparable property in the neighborhood.

“Q. Will you state what investigation you made in this connection?

“A. You mean who I talked to, what was the conversation—or, would you tell me just what——

“Q. Yes, if you will state the investigation that you made, to whom you spoke, and what information you [1013] received.”

The Reporter: Then there was certain colloquy and objections.

The Court: The objection is overruled.

Mr. Abbott: Your Honor, may we have the notes to which the witness then referred marked for identification?

The Court: Are those the same notes that you exhibited yesterday?

The Witness: With the one addition——

The Court: You had better look at that.

(The document was handed to counsel.)

The Court: Yes, they will all be marked for identification, if there is nothing else in there excepting such as you are going to use now in testifying.

The Witness: Yes, your Honor.

The Court: Mark them.

The Clerk: Yes, your Honor. Defendant's Exhibit Z, for identification.

(The document referred to was marked Defendant's Exhibit Z for identification.)

(Testimony of Adolph G. Sutro.)

Mr. Cranston: I presume, your Honor, that the only part which is being marked for identification is the front of each of those pages. I notice there is writing on the back.

The Court: That is what I was trying to elicit.

The Witness: It is scratch paper. It has no bearing at [1014] all on the matter.

The Court: Did you look at that, Mr. Abbott?

Mr. Abbott: You are only using your own long-hand memoranda?

The Witness: Yes. The balance is just printed scratch paper.

Mr. Abbott: I will not bother looking at it, your Honor.

The Court: All right.

The Witness: On February 15, 1954, at 9:00 o'clock in the evening, I called on Mr. Joseph Alvarado, and his wife, at this home. Mr. Alvarado told me that he had rented hill land to the——

Mr. Abbott: Just a moment. We will object, your Honor. This answer is going beyond the scope of the question and the court's ruling.

The question was what investigation had been conducted, which, I take it, calls for a general statement of having talked with people. I don't think the question or the court's ruling with respect to our objection extends to the substance of conversations, the figures which were reported, and detailed data of that type. If it does, and is so understood, we would like to renew our objection on this ground, that the particular matter ascertained as a

(Testimony of Adolph G. Sutro.)

result of that investigation is hearsay, not within the expert opinion exception to the hearsay rule, and, therefore, objectionable. [1015]

The Court: I would think that is true. The ruling is somewhat of a departure from the previously adjudicated cases, which are mostly condemnation, however. I think in this case, which seems to be, at least to this date, with the exception of the Dalhite case, *sui juris*, and we are pioneering in a new line of adjective law, evidentiary law, that we want to extend these cases so that we are getting here a great number of witnesses, which will prolong the litigation and not to any advantageous result.

So I think the details of conversations are not material, and the ruling does not mean that those matters can be searched on the examination in chief.

The source of his information which led him, in addition to his own proprietorship status, ownership status, which may be or may not be to buttress his opinion, I think is proper, but the details I do not believe come within the scope of the ruling.

Mr. Weymann: May I urge, your Honor, a further reason for that objection, and that is emphasized in *Sharp v. United States*, that the source of this information is the opinion of people whom the defendant is unable to cross-examine to ascertain the extent of their knowledge, the scope of their knowledge, and their qualifications to express an opinion. That is a further reason.

(Testimony of Adolph G. Sutro.)

The Court: That would be true under the ruling as made, [1016] but if the ruling were the other way, of course, the process of this court would be available to the defendant to bring those people in, and that is another reason why I think it should be circumscribed. It would prolong these cases inordinately.

Q. (By Mr. Cranston): Very well. Mr. Sutro, I think within the court's ruling, you may state who Mr. Alvarado is, that is, is he a tenant or an owner of property in the neighborhood.

A. Mr. Alvarado at one time was manager of the Sonia Henie ranch.

The Court: That does not mean anything. Where is the Sonia Henie ranch? We don't care who the person is, whether it is the skater, or somebody else.

The Witness: It happens to be the skater, your Honor. The ranch is in the neighborhood of the San Luis Rey Valley, just a few miles from my own. Mr. Alvarado was the manager of the ranch, and in charge of the renting.

Shall I give dates?

Q. (By Mr. Cranston): I believe you can just give the general period, and the individuals whom you spoke to, and identify them as to their relationship to this property, or other property which was within this vicinity.

A. The information in regard to rentals which Mr. Alvarado gave me was based on the ones he had negotiated in [1017] 1946 and 1947.

(Testimony of Adolph G. Sutro.)

Mr. Abbott: Your Honor, I think this is going a little too far. As I understand the court's ruling, it is that the witness may identify the various people he contacted. Now we are getting into specific rentals periods and specific pieces of property.

The Court: I think the question related to a specific period, that it covered the period from 1946 on, did it not? Mr. Weymann, wasn't that it?

Mr. Weymann: I think it did.

The Court: I think he should have a right under the ruling to specify the period that the individual or entity from whom he sought information—the period that such information disclosed.

The Witness: Also, in the period 1949 and 1950 he occupied the position of landlord.

On February 16, 1954, at 2:45 p.m., I called on Mr. Jack Delphy at his office in Vista.

Mr. Abbott: May I ask how that name is spelled?

The Witness: D-e-l-p-h-y. He is a very large renter of property, Mr. Abbott. He gave me information regarding property he had rented in 1946, also in 1951 and '52, and in 1953. He also stated, as a governing factor on the rental which he obtained, that the water——

Mr. Abbott: We will object to this extension of the [1018] witness' testimony, your Honor.

The Court: I think you had better propound questions as to each of these phases.

Mr. Cranston: Very well.

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Cranston): At this time I will simply ask you, Mr. Sutro, who was the next individual with whom you spoke, or any other individuals to whom you spoke?

A. I spoke to Mr. John Katzenbach, who told me regarding rentals he had received in 1948, 1949, and 1950.

Mr. Abbott: That name is spelled how?

The Witness: K-a-t-z-e-n-b-a-c-h.

Q. (By Mr. Cranston): Did you see anyone else?

A. Yes. On February 18, 1954, at 9:00 a.m., I saw Mr. Joe Murillo. He told me——

Q. Pardon me. Who is Mr. Murillo?

A. He is a tenant.

Q. Of property at what location?

A. Very close to my ranch; just the other side of Foss Lake.

The Court: Morrow?

The Witness: Murillo, M-u-r-i-l-l-o.

The Court: Oh, Murillo.

The Witness: Murillo. He told me he was a tenant in the period 1953—the three years previous would be 1952, 1951 and 1950. [1019]

Q. (By Mr. Cranston): By the way, I don't believe that you identified Mr. Katzenbach, as to his position.

A. Mr. Katzenbach was a landlord.

Q. And where was the land located?

A. That was located near Vista.

The Court: Near Vista in San Diego County?

(Testimony of Adolph G. Sutro.)

The Witness: Yes, your Honor.

Q. (By Mr. Cranston): To whom did you next speak?

A. On February 20th, oh, I returned to Mr. Delphy's office to ask him regarding another piece of property which he owned, and he gave me the rents he received as a landlord in 1949 and 1950, and also in '46, '47, '48, and '49.

Q. Where was this other piece of property located?

A. That was located at a place called Delphy Corners. It is not too far from Vista.

Q. Whom did you next see?

A. On February 20th, at 5:45 p.m., I called on a Mr. Ambrose De Bard, D-e B-a-r-d. He told me that as manager of a ranch he was renting land, and gave me the water costs, and the price received.

Q. For what purpose?

A. I called him back—there is a later note on that. I had overlooked obtaining the period on February 20th. I called him again on February 27, 1954, at 4:10 p.m. He said the period was from 1948 to date. [1020]

Q. Did you talk to anyone else?

A. Yes, on February 20, 1954, at 6:30 p.m., I visited Mr. Faustina Faucett at his residence.

Q. And where——

Mr. Weymann: Pardon me. May we have the spelling of that name?

The Witness: F-a-u-s-t-i-n-a, and the last name is F-a-u-c-e-t-t.

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Cranston): And what position does Mr. Faucett hold?

A. Mr. Faucett holds the position of a landlord.

Q. Where is his property located?

A. It is located on the other side of Foss Lake, directly across from my ranch.

Q. What period of ownership did you discuss with him?

A. From 1946 to 1954. There was some discussion between Mr. Faucett and his wife as to the exact rentals, so the leases were produced for my inspection.

Q. As written leases?

A. As written leases.

Q. And you examined those personally?

A. I examined the leases personally?

Q. Did you talk to anyone else?

A. Yes. On February 21, 1954, at 11:30 a.m., I called on Mr. Jack Dunn at one of his [1021] ranches.

Q. And where is his ranch?

A. Mr. Dunn, at the time I called on him, was living near Vista. His position is that of a tenant. He gave me his current rental cost, and what the water rates were which he was paying. He also gave me the rental he was paying in association with a partner. That also was current. In addition, Mr. Dunn told me the rentals he had paid on another piece of property in 1947, 1948, and 1949.

(Testimony of Adolph G. Sutro.)

Q. Did you have any conversation with anyone else?

A. Yes. Some weeks ago Miss Whelan told me——

Q. Who is Miss Whelan?

A. She operates an adjacent dairy—that—may I mention the name of the tenant? Am I allowed to do that?

Q. I believe you may mention the tenant as long as you do not state the specific rent, within the court's ruling.

A. Told me that Clarence Nichizu had offered her a certain sum for the rental of 43 acres of land, and that he would probably be interested in renting 43 acres from me if I wished to do so.

Mr. Abbott: I will move to strike the last part of that answer as being without the scope of the court's ruling.

The Court: Yes, that may go out. That was not responsive.

Q. (By Mr. Cranston): Mr. Sutro, did you talk to anyone else, that is, in connection with rent values?

A. In chronological order, the next and final conversation [1022] was with Mr. De Bard, when I phoned back to ask him regarding the dates. I have already testified to that effect.

Q. Yes. Now, I believe this would be within the court's ruling: Can you state what was the lowest rental which was quoted in any conversation?

Mr. Abbott: Now, hold your answer, please.

(Testimony of Adolph G. Sutro.)

I believe that is without the scope of the court's ruling, your Honor, and we will object to it on that ground; and in addition to the grounds stated in our prior objection, that there has been no basis for comparability established. We don't even know which property is going to be described in the answer to the question propounded.

The Court: In one of the cases cited by Mr. Cranston—I think it was you who cited it—in one of the earlier arguments, *Givens v. Markall*, 51 Cal. App. 2d, 374, the California Appellate Court in deciding that question used this language:

“One whose real property is injured by another's wrongful and negligent act is entitled to such damages as will compensate him for the injury or loss sustained. No hard and fast rule can be laid down, however, for the measurement of these damages. Whatever rule is best suited to determine the amount of loss in the particular case should be adopted.”

Now, it is line with that pronouncement of the California Appellate Court, which is a procedural matter, and I presume would be applicable here in the absence of any superior Federal authority, that I do not believe that the details should be gone into. That is the point. The details of these things will in my judgment and in the court's discretion prolong this case unnecessarily, and perhaps result in no more secure basis for judgment than if it is excluded. I do not believe that we should go into the details.

(Testimony of Adolph G. Sutro.)

These are proper, because of the fact that they are elements of factors that the witness states he had in mind when he arrived at his opinion of rental value. Now, he hasn't given that opinion yet. When he does, then, if counsel on the other side want to go into those matters, they will have the right to search the situation, insofar as they desire to, having in mind, of course, the scope of the court's ruling.

Now, will you read the last question?

(Question read.)

The Court: Objection sustained.

Q. (By Mr. Cranston): Mr. Sutro, during your discussions with the individuals whom you have named, did you discuss the cost of water which these individuals were paying, or which their tenants were paying in the case of landlords?

A. Very definitely.

Q. In arriving at your opinion as to the value of your property, what factors have you borne in mind? [1024]

A. The comparability of the land, and the ratio of the water costs.

Q. Have you used the same figures for water consumption, computing the cost of water on your land and the value of your land, the rental value, as you used in computing the cost of the water on the lands of the individuals to whom you spoke?

A. No.

Mr. Abbott: We will object to that, your Honor.

(Testimony of Adolph G. Sutro.)

He hasn't shown any basis for computing the cost of water upon the lands of the persons with whom he conversed in this matter. He testified only that he inquired as to the water sources, which is something very different.

Mr. Cranston: If the court please, I would also like then to ask Mr. Sutro if he inquired, in addition to the source, as to the cost of the water on the other land.

The Witness: Definitely.

The Court: I will overrule the objection. I don't think it has very much probative force, however. It seems to me that we ought, if we can, to permit the court to hear the reasons that the witness formulated, which led him to give an expression of value, which he hasn't given yet, of course. This is merely the foundation for the giving of that opinion. But I am afraid we are getting out into divergent matters which will not have much tendency to either strengthen or [1025] weaken the opinion which he will give, but which would lead us into avenues of investigation which I do not believe were within the concept of Congress when they passed this Federal Tort Claims Act, as distinguished from other forms of litigation concerning the value of land.

Q. (By Mr. Cranston): Mr. Sutro, then bearing in mind what the court has said, what factors did you consider in arriving at your opinion as to the rental value of your land for the period from 1946 to the present time, or until 1953?

(Testimony of Adolph G. Sutro.)

A. The cost of water and the comparability of the crops raised.

Q. Was that in relation to other properties?

A. If I understand the question correctly, the comparison of the properties about which I inquired and my own were for the purpose of arriving at a value. I do not know if I understand your question correctly.

Q. Well, my question was that in determining the value to give to the cost of water on your property and the crops grown upon it, did you consider those factors on your property in relation to the same factors on the other properties that you had investigated?

A. Yes, with the exception of the allowance for water used.

Q. Will you explain that answer?

A. In figuring the water requirements on my own [1026] property, I figured four acre feet per season.

Q. Per acre?

A. Yes. As some of the properties about which I inquired had very high water costs, I reduced it in their case to two acre feet per season. In other words, I am using a factor of one-half of what I am allowing on my own property.

Q. In computing your own water costs, and in the figures which you have previously given, did you make allowance for the draw-down in your well, as shown on Exhibits 41 and 42 in evidence?

A. I made allowance for the draw-down in my

(Testimony of Adolph G. Sutro.)

well, but I do not recall the exhibits by those numbers.

Q. I will show them to you. Those are the notes which were taken from your book yesterday?

A. Those are copies of my well tests——

Q. Yes.

A. ——which show the draw-downs.

Q. And you made allowance for the draw-down as shown in these exhibits? A. Definitely.

Q. Mr. Sutro, based upon the reasons you have previously given, what is your opinion as to the rental value of your property for the years 1946 to the present time, assuming a supply of water which would be used for irrigating edible vegetables for human consumption? [1027]

Mr. Abbott: We will object to that, your Honor. The question goes beyond the scope of the court's ruling limiting the period for which we are measuring diminution of rental value. That period terminated in July, 1952.

Mr. Cranston: If the court please, I understood that at the last hearing the court indicated that he was at least open to further discussion at the proper time in this case. Now, if the court still adheres to its ruling, of course, the subsequent period would be out, but I think we should put it in now, so that if the court should change its ruling, it would be evidence upon which to act.

The Court: It is in, and the objection is sustained. I am not going to change the court's view

(Testimony of Adolph G. Sutro.)

as to the period at which the question of damages is to be estimated.

Mr. Cranston: Very well. Then we will limit the question to the period of 1952.

The Witness: From 1946—oh, may I ask if this presupposes the installation of an irrigation system?

Mr. Cranston: Presupposes the existence of an irrigation system adequate to water the land.

Mr. Abbott: I will object to that, unless counsel clarifies the question by indicating whether he is instructing the witness to assume the existing irrigating system, or some proposed irrigating system.

Mr. Cranston: On that, your Honor, we are assuming the [1028] existence of the irrigating system which Mr. Sutro is at all times anxious to construct, and would have constructed in 1946 but for the acts of the Government and, of course, the installation of the system in the year 1950 to water the additional acreage which had not previously been irrigated.

Mr. Abbott: Your Honor, this is having his cake and eating it too in this case. He wants damages for not having built the system, and he wants the system to be considered to be in place for the purpose of computing the diminution in rental value. Furthermore, there is no described system that the witness contemplated in 1946. The plans we have are the plans which were prepared in the fall of 1953.

Mr. Cranston: Of course, the witness has testi-

(Testimony of Adolph G. Sutro.)

fied as to the reason for not previously preparing the plans.

The Court: It goes back to the same basic point of difference between the litigants, and I am not sure at this time. Without indicating the measure which the court will ultimately adopt, I think perhaps the safer plan in the record would be to hear both aspects of it, as to time and as to prospective or accomplished improvements.

The court is very much inclined to adopt the conclusion, unless something develops in this case that has not appeared to this time, that as to these purely mental concepts it is rather a dangerous ruling to leave it in this broad field of ex delicto legislation, and to permit the alleged injured [1029] person to elicit mental concepts which haven't developed into accomplished situations. But I believe that perhaps to make the record as secure as it can be made in this court at this time, it would be well for the court to hear both aspects of that situation, in the light of the indications the court has just made as to what probably will be the ultimate factual conclusion of the court.

Mr. Cranston: Madam Reporter, will you read the question, then, which I believe can now be answered by the witness?

(The question was read as follows):

("Q. Mr. Sutro, based upon the reasons you have previously given, what is your opinion as to the rental value of your property for the years 1946 to the present time, assuming a

(Testimony of Adolph G. Sutro.)

supply of water which would be used for irrigating edible vegetables for human consumption?"")

The Court: I think that was modified later.

(The record was read further as follows):

"Mr. Cranston: Very well. Then we will limit the question to the period of 1952.

"The Witness: From 1946—oh, may I ask if this presupposes the installation of an irrigation system?

"Mr. Cranston: Presupposes the existence of an [1030] irrigation system adequate to water the land."")

The Witness: And the date is from 1946 to 1951, inclusive?

Mr. Cranston: To 1952.

The Witness: Oh, 1952, inclusive.

Mr. Abbott: Your Honor, we are still not certain, with deference to the court's ruling, as to which assumption is now being followed by the witness' testimony; whether this adequate system is a proposed system or an existing system.

The Court: I think the question should be a little more clear on that. It may be that the position will be taken that one of the witnesses' systems—Ikemi, I believe it was, who testified, the Japanese witness, whose name I have forgotten correctly—whether his system would be adequate. You used the term "adequate," and that is quite an elastic term to use.

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Cranston): Mr. Sutro, will you assume the existence, then, for the purpose of your present answer, of a system such as you proposed to construct?

Mr. Abbott: For the record, may we note the objection interposed to the prior question?

The Court: The objection is overruled, as previously stated by the court.

The Witness: In that case I would estimate a fair rental for the year 1946 of \$70 an acre; for the year 1947, \$75 an acre; for the year 1948, \$85 an acre; from 1949 to date, \$100 [1031] an acre.

Mr. Abbott: We will move to strike the final phrase of that answer as not responsive, because it comes up to date, and that is not proper.

Q. (By Mr. Cranston): Would that be from 1949 to the conclusion of the period the court would consider?

A. Yes, I had my memorandum folded to 1952 here, and said "to date." It was done in error.

Q. That would apply to what portion, or how many acres of your ranch?

A. That would apply to approximately 97 and some-odd acres up to the period when the first well I drilled was tested, which I believe was December of 1950. After that time it would apply to 147 and a fraction acres, I believe.

Q. Would your opinion be different if the system used to irrigate the property were the system which had been installed and was on the property at the time you purchased it?

A. Yes.

(Testimony of Adolph G. Sutro.)

Q. Can you state an opinion as to the rental value of your property assuming the existence of that system?

A. I am not prepared to make a statement, as I have not had the time to study the factors involved which would enable me to come to an intelligent conclusion. This was something new to me, and I—— [1032]

Q. Mr. Sutro, turning now to the matter of the buildings upon the property, you heard Mr. Ikemi's testimony, I believe? A. Yes.

Q. When you purchased the property, was the residence building which he mentioned on the property? A. No.

Q. Was there any indication as to where it had been? A. Yes.

Q. What was the indication?

A. Some ashes.

Q. The building had then burned before you bought the property?

A. The indications were that it had.

Q. And in what condition was the barn which Mr. Ikemi mentioned?

A. That was badly infested with termites, and it was demolished.

Q. When was that done?

A. Immediately after the purchase of the property.

Q. In what condition were the other buildings?

A. Bad.

Q. What did you do to them?

(Testimony of Adolph G. Sutro.)

A. With the exception of one, which was worth salvaging for a sort of a shop construction office, why, they were [1033] demolished. They were not worth repairing.

Q. Did you prepare or have prepared plans for additional buildings on the property?

A. Yes.

Q. During what period of time were these plans prepared?

A. Immediately after the purchase of the property.

Mr. Cranston: I will ask that this be marked as our next exhibit for identification.

The Clerk: That will be Plaintiff's Exhibit 44 for identification.

Mr. Cranston: Your Honor, I have here this whole group of plans, all of which have been exhibited to counsel for the defendant. They have had them in their possession. Do you wish to have them introduced all as part of the same exhibit, or as separate exhibits? They relate to different buildings.

The Court: Probably if we take an initial number or letter, and then have a series. If they be numerals, a series of A, B, C, and so forth. If they be letters, then one, two, three, four.

Mr. Cranston: Then this would be 44-A, in that event.

The Clerk: 44-A, for identification, instead of just 44.

(Testimony of Adolph G. Sutro.)

(The document referred to was marked Plaintiff's Exhibit 44-A for [1034] identification.)

Q. (By Mr. Cranston): I show you a blueprint, and ask you what this represents.

A. That represents the implement shed.

Q. Where was this to be erected?

A. That was to be erected at the——

Mr. Abbott: We will object at this point, your Honor, on the grounds previously stated to all evidence relating to the intention of the witness as immaterial and irrelevant, and not a proper measure of damages in this case.

The Court: Overruled.

The Witness: This was to be erected on the farmstead.

Q. (By Mr. Cranston): And when was this plan prepared and by whom?

A. This plan was prepared early in 1946, under my directions, and drawn by a man who was working for me.

Q. Do you still intend to erect this building?

A. Yes, I do, but slightly larger.

Q. The size of the building is represented here as what? A. 46 by 21.

Q. You say you intend to erect a larger building? A. Yes.

Q. Otherwise, will you follow these plans?

Mr. Abbott: Your Honor, I don't know whether our understanding of the other day is still appli-

(Testimony of Adolph G. Sutro.)

cable in this session [1035] or not, but to save time, I would like to make a blanket objection to all of the testimony of the witness relating to his intentions in 1946 or any time prior to the present date, with respect to improvements to be constructed upon the property, on the grounds that it is hearsay, it is irrelevant and immaterial. And I will request a stipulation from counsel to the effect that that objection may be deemed interposed to this whole series of questions to which it will relate.

Mr. Cranston: Well, I will stipulate you need not object to each separate document, but it will be considered as a continuing objection.

Mr. Abbott: And to the various answers or questions propounded to the witness with respect to his plans, whether or not embraced within the document.

Mr. Cranston: Very well.

The Court: So understood.

The Clerk: The next exhibits are 44-B, 44-C, 44-D, 44-E, and 44-F, for identification.

(The documents referred to were marked Plaintiff's Exhibits 44-B to -F for identification.)

The Court: Now, before we proceed further, and for the purpose of expediting the case properly, insofar as it can be done, I understand from counsel that these blueprints, which have now been marked for identification, have heretofore [1036] been ex-

(Testimony of Adolph G. Sutro.)

hibited to Government counsel. Is that correct?

Mr. Abbott: Yes, your Honor.

The Court: And have you had an opportunity to make copies of them in some way?

Mr. Abbott: We were told that they were somewhat difficult to copy, and so our people looked at them for a short period, when they were in our possession, and then are continuing to examine them when Mr. Cranston's and the Court's convenience permits, and propose to do so even after they are admitted in evidence.

Mr. Cranston: Yes. Mr. Abbott had them for a period of a week or so sometime ago, and I believe you said you were unable to make copies of them at the time.

Mr. Abbott: I don't understand the technical reasons why, but we were advised it was difficult or impossible to reproduce them.

The Court: So that there have been no reproductions or copies in the hands of your expert until today?

Mr. Abbott: Well, our expert has viewed them, your Honor, but has not had reproductions made.

Mr. Cranston: In other words, Mr. Abbott has——

The Court: Has he been able to, or have you been able to submit to him delineations or drawings, which to him as an expert or an engineer or a draftsman will enable him to follow the testimony as it is given from the witness stand? [1037]

The reason I am asking is that some gentleman

(Testimony of Adolph G. Sutro.)

stood up here, as though he wanted to look at the blueprints. Now, if he has before him something that gives him what is impressed upon the blueprint, why, to save time, it would be better for him to stay where he is and to watch his copies or his delineations and follow the witness' testimony.

Mr. Abbott: He does not have that opportunity, your Honor, and I know it is a slight departure from usual procedure, but if he could be permitted to stand over here and view the drawings as the witness testifies, it would be a convenience.

The Court: So long as he remains silent, unless asked to speak.

Mr. Abbott: I think that he will.

The Court: And keeps his mental concept to himself until he is asked properly to take the stand to testify.

Mr. Abbott: I find that this gentleman never expresses himself unless asked for an opinion.

The Court: That is a very good rule, I think, even for the Court. It has not been adopted by the Court in this case very extensively, but maybe we can follow it from now on.

Mr. Cranston: I think the Court understands that counsel for the defendant has had these documents in his possession for a period of about a week, during which he was [1038] permitted to do anything he wished with them. There has been no effort to conceal them from him in the slightest.

Mr. Abbott: Oh, there was no such suggestion made by the Government.

(Testimony of Adolph G. Sutro.)

The Court: I didn't understand there was. I was just trying to speed up the case.

Q. (By Mr. Cranston): I show you now, Mr. Sutro, five additional blueprints, and ask you to what building these blueprints belong or appertain?

A. This one is from the shop. This is the shop. This is the shop. This is the shop. This is the shop. They are all from the shop.

Q. That is, all five of these documents I have just delivered to you are prints of a single building?

A. Yes.

Q. You refer to that as the shop. Now, I notice on the document which has been marked 44-D, that there are various rectangular markings on the portion to the left entitled "floor plan," one being the statement "drill press," one being the word "lathe," another "welding table," another "anvil," another "electric welding table, arc welder," and various other notations around the walls of the building, in the center of the building, and also a notation "electric panel board." What are indicated by these various words to which I have referred? [1039]

A. The placing of the various machine tools.

Q. Now, when were these plans which I have shown to you prepared?

A. Early in 1946.

Q. And by whom?

A. Prepared under my supervision by one of my men.

Q. And was this building to be erected on your property in San Luis Rey?

A. It was.

Q. What was the purpose of this building?

(Testimony of Adolph G. Sutro.)

A. At the time it was intended for the maintenance of the ranch equipment and some experimental work I was contemplating.

Q. Did that include experimental work in connection with farm machinery?

A. It did; but not limited to it.

Q. Yes. A. Yes.

Q. I notice that there are figures as well as words within these rectangular areas. What do the figures represent within these areas?

A. The approximate floor space necessary to position the various tools, in order that there would be no interference between them.

Q. Did you intend to purchase tools to fit those spaces? [1040]

A. Yes, approximately fit them.

Q. In 1946, at the time these prints were prepared, had you prepared a list of specific equipment that you would purchase?

A. The list was illustrated by the positions of the tools. The specific brand was not written down.

Q. Did you have specific brands or qualities of merchandise in mind? A. In some cases, yes.

Q. In general, what type of merchandise did you intend to purchase?

A. In general, medium quality.

Q. Since 1946 have you prepared a definite list of such equipment? A. Yes.

Q. For what purpose was this list prepared?

A. The list was prepared in order to permit an

(Testimony of Adolph G. Sutro.)

appraisal being made as to the 1946 cost of these tools, and the cost at the present time.

Q. Or in the years 1952 or 1953, as to the cost?

A. Yes.

Q. I show you certain documents and ask if these constitute the list of tools that you prepared?

A. Yes. [1041]

Mr. Cranston: I will ask that these be marked as the next portion of this exhibit.

The Clerk: That will be 44-G, for identification.

(The document referred to was marked Plaintiff's Exhibit 44-G for identification.)

Q. (By Mr. Cranston): Do these tools that are set forth on Exhibit 44-G, for identification, represent the same quality of tool and price range that you had expected to purchase in 1946?

Mr. Abbott: Your Honor, I think in addition to the standing objection, that we are now entering a field that is without the scope of the Court's ruling. We are talking about tools which the witness mentally planned to buy in 1946, and he refers to a list prepared quite recently as corroborative of that mental intention.

The Court: As I remember, the pleadings state the prospective provision for instrumentalities other than the structure, the building itself.

Mr. Cranston: Yes, the plans show definite tools. Every instrument referred to, every tool referred to on that list is indicated here.

The Court: But I am speaking of the pleadings

(Testimony of Adolph G. Sutro.)

themselves in the case. They did allege, as I remember—I am not sure about it now, unless you are, and that is the question—the pleadings allege that the claims for the damage were the [1042] resultant of the tortuous act of the Government in preventing the attainment, not only of the building itself, but of the equipment in the building for ranch purposes.

Mr. Abbott: Unless my recollection is in error, your Honor, I don't think the pleadings contain any reference whatsoever to any of this claim predicated upon increased cost of building structures. The pleadings are predicated upon loss of profits, silting and inundation of the land.

Mr. Cranston: I am inclined to agree with counsel, that the pleadings do not specify the precise manner in which the damage was created.

If the Court should believe that there need be any amendment, we will, of course, amend to conform to the proof, but the case has proceeded upon the theory, as set forth by Mr. McCall himself, at one stage of the hearing, that all that was necessary was to allege damage, and that whatever the damage was—whatever the damage that was sustained, it could be introduced without such an amendment to the pleadings.

I can refer to Mr. McCall's statement, if your Honor wishes. At that time we were considering a possible amendment of the pleadings, which he said would be unnecessary.

The Witness: May the witness say something, your Honor?

(Testimony of Adolph G. Sutro.)

The Court: No, I have just been looking to find something that is in the transcript here. [1043]

The Witness: I think it is at page 188, line 7.

The Court: I don't know that I am thinking of the same thing, or if I am looking at the right transcript. I don't know that I have that transcript here.

In the hearing before the Court on September 29, 1953, a part of your argument, Mr. Cranston, on page 99 of the transcript of that session was:

“The fact that Mr. Sutro was purchasing the property for commercial purposes, with the intention of using it for farming is shown by the facts, which would be introduced in evidence at any further hearing in the case; that since the decision reached by your Honor on the question of liability, that Mr. Sutro has actually started the construction of a repair and maintenance building for equipment, which is 2600 square feet on the main floor and 1600 square feet on the mezzanine floor. The foundations, piers, girders, joists, sub-floor are completed. That is all going up at the present time. The excavation for the foundation for the foreman's house has been started, and construction is to be commenced before the end of this week on a third building containing over 1200 square feet for an implement storage shed. In other words, once the issue of liability is determined, so that he felt in any degree safe in proceeding to put [1044] in the buildings necessary to farm the property, as he had originally intended to, he immediately took the

(Testimony of Adolph G. Sutro.)

steps in accordance with the plans which had been prepared in 1946."

Will you read the question, now?

(The question was read.)

The Court: Objection overruled.

The Witness: In general, yes, though cheaper ones have been specified in the list in at least one instance which occurs to me.

Q. (By Mr. Cranston): That is, the list now submitted contains at least one cheaper instrument than you had originally intended? A. Yes.

Q. Does it contain any more expensive?

A. No.

The Clerk: The next exhibit is 44-H, for identification.

Mr. Cranston: And can you number these while I am doing this? There is a series there.

The Clerk: And 44-I, for identification.

(The documents referred to were marked Plaintiff's Exhibits 44-H and 44-I, for identification.)

Q. (By Mr. Cranston): I show you now what has been marked 44-H, for identification, and ask you when this was prepared, and what it [1045] represents.

A. That was prepared early in 1946. It represents a runway for a traveling crane between the implement shed and the shop.

Q. And this was prepared by you, or under your

(Testimony of Adolph G. Sutro.)

supervision? A. Under my supervision.

Q. Do you still intend to use a traveling crane?

A. Yes.

Q. By the way, you have at least partially completed the work shop or repair shop indicated by the previous five exhibits; is that correct?

A. Yes.

Q. Were the plans which are represented by these documents followed in the construction of the work shop? A. Not implicitly.

Q. What changes were made, if any?

A. This alcove was temporarily eliminated, and the mezzanine floor of 1600 feet was installed, and the crane has been installed inside the shop.

Q. When you say "this alcove," you refer to a small annex 19 feet by 15 feet in size, as shown on the floor plan, Exhibit 44-E? A. Yes.

Q. And instead of that, what has been inserted in the building? [1046]

A. Well, the building has been framed so that this can be put on at any time.

Q. That part has not yet been built?

A. No, the building has just been framed to take care of it, but the mezzanine is a new development completely. And then, of course, the placing of the crane inside is a change.

Q. Are you making any charge against the Government for the additional cost of the mezzanine?

A. No, nor am I making any charge to the Government for the cost of the crane, because I owned the crane prior to 1946.

(Testimony of Adolph G. Sutro.)

The Clerk: With respect to this 44-I series, which is a group, I have also marked 44-I-1, 44-I-2, and 44-I-3, attached to 44-I, all for identification.

(The documents referred to were marked Plaintiff's Exhibits 44-I-1, 44-I-2, and 44-I-3 for identification.)

Q. (By Mr. Cranston): Mr. Sutro, I show you this group of blueprints marked Exhibits 44-I, 44-I-1, 44-I-2, and 44-I-3, and ask you what these blueprints represent?

A. These represent the plans for a residence.

Q. And when were these plans prepared?

A. Preliminary plans were prepared early in 1946.

Q. And when were these plans that are here prepared?

A. Well, with minor changes, they are the [1047] same.

Q. I note certain lines marked upon these plans in ink, or pencil of some kind. When were those markings placed upon the plans?

A. Those were also marked upon the plans as soon as they were received. Now, I can't tell you the exact date that this particular blueprint was received, but, as I said, there is practically no change from the preliminary. And these represent some of the girders, I believe, to be used in the framing. Yes, that is what they are.

Q. Had you actually commenced construction of your residence at the time you ascertained the

(Testimony of Adolph G. Sutro.)

pollution of the well? A. Yes.

Q. Do you still intend to construct a residence in accordance with these plans? A. Yes.

The Court: I think I can ascertain here something in the Court's mind. How many rooms were there in the proposed house?

The Witness: There were two bedrooms, a library, a dining room, and a kitchen, and a utility room, plus the cold storage facilities for the entire ranch.

The Court: All on one floor?

The Witness: All on one floor.

The Court: Now, this foundation plan, that is made [1048] sufficiently large to support additional floors, if it became necessary to build them?

The Witness: No. This was designed exclusively as a one-story structure, with no steps for people of advancing years.

The Court: And the occupant in that respect was to be your mother?

The Witness: And myself.

The Court: You do not consider yourself in that category, that is so far as years are concerned? I am not speaking about avoirdupois.

The Witness: I heard you tell the counsel not to argue with you yesterday, your Honor. I have nothing to say.

Mr. Cranston: Had you concluded, your Honor?

The Court: Yes, that is all I have.

Mr. Cranston: This should probably also be marked 44-I-4, since it also relates to the residence.

The Clerk: 44-I-4, for identification.

(Testimony of Adolph G. Sutro.)

(The document referred to was marked Plaintiff's Exhibit 44-I-4, for identification.)

Q. (By Mr. Cranston): I show you a series of papers marked Exhibit 44-I-4, for identification, and ask you what they represent.

A. Specifications for the residence.

Q. Which is represented by the three preceding documents? [1049] A. Yes.

Q. Were these specifications prepared for this specific residence in the year 1946?

A. Specifications were prepared. I do not think these particular ones were prepared at that date, because the specifications say "February, 1947," on them.

Q. That is, they say "January, 1947," on the particular specifications? A. Yes.

Q. The specifications were prepared in 1946?

A. Oh, yes.

Q. Do you have any prior specifications preceding those?

A. That happens to be the only copy I have. I can't find any more. We had to get that one back, I believe, from the Government.

Mr. Cranston: I guess this would be 44-J.

The Clerk: 44-J, for identification.

Mr. Cranston: And 44-J-1.

The Clerk: And 44-J-1, for identification.

(The documents referred to were marked Plaintiff's Exhibits 44-J and 44-J-1, for identification.)

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Cranston): I show you two documents which have been marked 44-J and 44-J-1, for identification, and ask [1050] you what these represent?

A. Those represented emergency housing accommodations. They were specified as the guest house.

Q. When were these prepared, and by whom?

A. Early in 1946, and under my supervision.

Q. Do you still propose to erect this guest house?

A. Yes.

Q. Using these plans? A. Yes.

Mr. Cranston: This would be K, and K-1.

The Clerk: 44-K, and 44-K-1, for identification.

(The documents referred to were marked Plaintiff's Exhibits 44-K and 44-K-1, for identification.)

Q. (By Mr. Cranston): I show you two additional blueprints, marked 44-K, and 44-K-1, for identification, and ask you what these represent.

A. These represented the storage shed.

Q. And when were these plans prepared?

A. Early in 1946, under my supervision.

Q. Do you still intend to erect the storage shed?

A. Yes.

Q. Using these plans? A. Yes.

Mr. Cranston: 44-L.

The Clerk: 44-L, for identification. [1051]

(The document referred to was marked Plaintiff's Exhibit 44-L, for identification.)

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Cranston): I show you Exhibit 44-L, for identification, and ask you what this represents, and when it was prepared.

A. That represents the help house. It was prepared early in 1946, under my supervision.

Q. And do you still intend to erect this house?

A. From these plans?

Q. Yes. A. No.

Q. What changes will be made?

A. Due to changes in social conditions, a more expensive home will be built.

Q. Are you making any charge against the Government, or filing any claim against them, for any additional cost by reason of the more expensive nature of the structure you propose to build?

A. No.

Q. Mr. Sutro, you have testified concerning plans for six different buildings. Was a wiring and inter-communication system designed for these buildings? A. Yes.

The Clerk: The next exhibit will be 44-M, for identification. [1052]

(The document referred to was marked Plaintiff's Exhibit 44-M, for identification.)

Q. (By Mr. Cranston): I show you Exhibit 44-M, for identification, and ask you what this represents.

A. That represents the very rough sketch of the underground wiring plan, where the transformers

(Testimony of Adolph G. Sutro.)

were located, the underground wires, and the inter-communicating system.

Q. Now, I notice certain areas which contain numbers. Can you identify these? What does No. 4 represent?

A. That represents house No. 4, the so-called guest house.

Q. And No. 3 represents?

A. The residence.

Q. What does No. 2 represent?

A. The shop.

Q. No. 1? A. The implement shed.

Q. And No. 5? A. The help house.

Q. And No. 6? A. The storage shed.

Q. Now, there are on this chart or map certain lines drawn with a red pencil, dotted lines. When were those lines placed upon this print or chart?

A. Early in 1946. [1053]

Q. And what do these red lines indicate?

A. The extent of the inter-communicating system, although apparently it was discussed at a later date, and it was extended here in a black line.

Q. That is, the line from building No. 3 to building No. 4 in black would represent a part of the "Voicall" system?

A. That is right. That is a part of the inter-communicating system.

Q. Is "Voicall" a trade name?

A. I believe it is a trade name.

Q. With the exception of the one pencil line marked "Voicall," from building No. 4 to building

(Testimony of Adolph G. Sutro.)

No. 3, what do the other pencil lines upon this exhibit indicate?

A. They represent the underground wiring system on the farmstead.

Q. And when were they placed upon this exhibit?

A. Oh, the lines were placed early in 1946. The fact that this one line is in black might have meant that when I checked the plan the boy did not have a red pencil in his pocket.

Q. Now, the area between buildings No. 3 and 2 on one side, and buildings 5 and 6 on the other, which contain certain dots, what does that represent?

A. This represented a small orchard. [1054]

The Court: Was the orchard growing at that time, or was it a prospective orchard?

The Witness: It was planted at that time, your Honor.

The Court: What kind of fruit was it?

The Witness: Miscellaneous. A few deciduous, and oranges, lemons, figs, apricots, and peaches.

The Clerk: The next exhibit is 44-N, for identification.

(The document referred to was marked Plaintiff's Exhibit 44-N, for identification.)

Q. (By Mr. Cranston): I show you Plaintiff's Exhibit 44-N, for identification, and ask you what this represents.

A. This represents the more detailed plan for

(Testimony of Adolph G. Sutro.)

the farmstead, showing the septic tank location, and the drainage pipes thereto, the sprinkling system for the orchard, and the fire protection system.

Q. At the time the other plans were prepared, did you contemplate constructing a septic tank for your residence?

A. I contemplated constructing the residence, and I would not know how to build one without attaching a septic tank thereto.

Q. Was this particular representation of the septic tank prepared in 1946, or at a later date?

A. It was prepared at a later date.

Q. When was this prepared?

A. It was prepared about the time the irrigation plan [1055] was prepared, which is already in evidence, I believe.

Q. The double red lines from buildings Nos. 4 and 3 represent septic drainpipe, is that correct—septic tank drainpipe? A. Yes, soil pipe.

Q. And the pencil lines in the orchard area in black pencil indicate what?

A. I will read the legend on this thing. Oh, they merely represent—you mean these lines?

Q. Yes, the lines at the bottom of the exhibit.

A. They represent short pieces of hose between the sprinklers.

Q. And the red lines in the orchard area between buildings 2 and 6 represent what?

A. Those represent the drainage system in the orchard.

(Testimony of Adolph G. Sutro.)

Q. And there appears to be just another septic tank line?

A. That is the septic tank line to house No. 5.

Q. Mr. Sutro, at the time you purchased the property, did you intend to operate it at a profit?

A. Definitely. A profit was necessary.

Q. Did you intend to grow vegetables on it?

A. Yes.

Q. Did you intend to purchase equipment necessary for that purpose? [1056] A. Yes.

Q. Did you prepare a list of such equipment in 1946? A. No.

Q. Why not?

A. I thought it would be too simple, when the time came to purchase it, to bother about making up the list right then.

Q. Have you prepared a list since then?

A. Yes.

The Clerk: This exhibit is 44-O, for identification.

(The document referred to was marked Plaintiff's Exhibit 44-O, for identification.)

Q. (By Mr. Cranston): I show you Exhibit 44-O, for identification, and ask you if this is the list of such equipment? A. That is——

Mr. Abbott: Your Honor, we will object at this point. This list appears to be of recent origin, and I think not only is objectionable for reasons stated in our standing objection, but also because it is without the scope of the Court's ruling.

The Court: May I see it?

(Testimony of Adolph G. Sutro.)

Mr. Abbott: This is not shop equipment of the type previously alluded to.

The Court: I don't recall any evidence as to the date [1057] of the preparation of this.

Mr. Cranston: No, I was going to ask that, your Honor.

The Court: Suppose you do it now. Then I will rule.

Q. (By Mr. Cranston): When was this list prepared, Mr. Sutro?

A. At the time that this septic tank was drawn in, and the irrigation system.

Q. That would be some time in the——

A. Subsequent to September of 1953.

Q. Some time in the fall of 1953? A. Yes.

The Court: I think that is within the objection. It will be sustained.

Mr. Abbott: Thank you, your Honor.

The Court: We will take a recess for a few minutes, gentlemen. There is a telephone message.

(A short recess.)

Mr. Cranston: Your Honor, might I be heard very briefly on your last ruling in regard to the farm equipment?

The Court: No, I think not. I am satisfied.

Mr. Cranston: Very well.

Q. (By Mr. Cranston): Mr. Sutro, you have testified previously concerning certain pumps to be used on your property, and the fact that you had prepared specifications in 1946, and had not been able to locate or reconstruct them; [1058] is that

(Testimony of Adolph G. Sutro.)

correct? A. That is correct.

Q. Did you subsequently prepare other plans and specifications for pumps subsequent to 1946?

A. Well, I prepared work sheets.

Q. What is involved in connection with the purchase of a pump?

A. The type of pump, the flow in gallons per minute, and the head against which it is to pump.

Q. Are specifications sent to pump manufacturers in such an event?

A. Yes, you usually request the manufacturer to quote you on a pump which will fit those specifications, and to please send you performance curves. I might change that to say performance curves are almost automatically included with the quotations.

Q. Did you prepare such plans and specifications and send them to various pump manufacturers at various times?

A. I prepared the data I mentioned, and have done so on many occasions.

Mr. Cranston: I will ask to have these documents marked as Exhibit 45-A, -B, -C, and so forth.

The Clerk: The next exhibit will be 45-A, for identification, 45-B, for identification, and 45-C, for identification, 45-D, for identification, and 45-E, for identification. [1059]

(The documents referred to were marked Plaintiff's Exhibits 45-A, to 45-E, inclusive, for identification.)

Q. (By Mr. Cranston): I show you the docu-

(Testimony of Adolph G. Suto.)

ments which have been marked Exhibits 45-A, -B, -C, -D, and -E, for identification, and ask you if these constitute a part of the correspondence which you have had with respect to the purchase of pumps? A. Yes.

Mr. Abbott: We will object to this line of inquiry. It appears the documents referred to were mailed to the plaintiff sometime in late 1949. Even assuming they would have some materiality if they constituted a transaction occurring in 1946, they certainly do not fall within the scope of the Court's ruling relating to the plans and specifications he had when he purchased the property, or shortly thereafter.

Mr. Cranston: If the Court please, if I might be heard on that: the witness has stated that he had prepared plans earlier, which he has misplaced and which he cannot discover; that this was a continuous course of conduct, and these are all, of course, prior to the instigation of this litigation.

The Court: These implements of agriculture, pumps and other equipment, don't they change from year to year; that there are improvements and changes in the patents, and so forth?

The Witness: The changes, your Honor, are minor as far [1060] as pumps are concerned.

The Court: I mean other equipment that would be used in farming activities or operations.

The Witness: Farming equipment is showing rapid changes.

The Court: Yes.

The Witness: Not pumps.

(Testimony of Adolph G. Sutro.)

The Court: For instance, motors, electric motors, aren't they modified and improved, or don't they progress from year to year?

The Witness: Probably slightly.

The Court: You think in the period from 1946 to 1952 there has not been much improvement along those lines of industry?

The Witness: In the particular—by the way, your Honor, that was merely a switch catalogue. The balance of them are pump inquiries.

In pumps and motors I do not think that any material improvement or material change has taken place. In other types of agricultural machinery, why, frequently changes have taken place.

The Court: Do you think it is possible for a man really to have had in mind in 1946 the specific equipment that the same type of a man would buy economically in 1952?

The Witness: Your Honor, it is perfectly feasible, and was done, to specify the output and the performance of pumps. [1061]

On the other equipment, equipment suitable for the production of crops in 1946 was in use. As of today there have been certain changes in this equipment, but the relative costs of construction, I would imagine, have changed but little. In other words, if somebody felt that on a hay chopper a hexagonal wheel in 1946 was a good way to press the hay on the apron, or whatever it is that brings it up, and in 1953 somebody had felt that a tentagonal wheel was more effective, the difference in cost of con-

(Testimony of Adolph G. Sutro.)

struction was nil, but the improvement in design might have been very great.

I would say that it is definitely possible to make a reasonable comparison in the cost of farm machinery between today and in 1946. If I did not feel it were possible, I would not have offered it in evidence.

The Court: I will overrule the objection. I think there have been a great many changes, and it is going to be rather difficult to evaluate the difference between the cost of certain agricultural implements—and I am speaking advisedly, from litigation—from 1946 to 1952, and that is the only phase of this question we are concerned with.

Mr. Cranston: Yes. Now, your Honor in the statement just made said “agricultural implements.” Do I understand that then refers to the farm equipment which has been ruled on before?

The Court: No, it does not. [1062]

Mr. Cranston: That refers then to the pumping equipment?

The Court: Yes, the last exhibits that I have inspected.

Mr. Cranston: Yes, the last exhibits. I did not know how broad the ruling “agricultural implements” was.

Q. (By Mr. Cranston): I call your attention, Mr. Sutro, to a letter which is contained in Exhibit 45-A, for identification, and ask if you had had conversations and correspondence with the Food Machinery and Chemical Corporation prior to the date of that letter?

(Testimony of Adolph G. Sutro.)

A. Yes, I did. I had had so much—I had asked them to submit so many different plans, I was finally ashamed to call them up any more; or so many quotations. The letter starts out, “It was a pleasure”——

Mr. Abbott: We will object to the reading of the letter.

The Witness: Excuse me.

Mr. Abbott: If it is to be introduced, it will be introduced as a document.

Mr. Cranston: Yes. Your Honor, I would like at this time, without introducing all of these pamphlets in evidence, to introduce in evidence this letter which constitutes a portion of Exhibit 45-A, for identification. I do not think that the catalogue and the specifications of the pump need be introduced.

The Court: They can be filed, for [1063] identification.

Mr. Cranston: Yes.

Mr. Abbott: We will tender the objection heretofore made, namely, that that is irrelevant, and has no proper bearing upon the measure of damages in this case; and a special objection addressed to this particular document, that it bears date of September 9, 1949, and as the Government understands the Court's ruling, the Court is concerned with plans and specifications prepared by the plaintiff at or about the time that he purchased the property. This appears to be a specification prepared by someone else more than three years hence.

(Testimony of Adolph G. Sutro.)

The Court: May I see the letter, please?

(The document was handed to the Court.)

Mr. Abbott: In addition to the grounds of objection we assert that this is hearsay, and also objectionable upon that ground.

Mr. Cranston: If the Court please, the receipt of the letter is an act, and is, of course, not hearsay.

The Court: It is just a copy that is here?

Mr. Cranston: Yes.

The Court: Overruled.

The Clerk: Did your Honor wish that marked specially?

The Court: I see no necessity of placing in the record as evidence these long-printed statements, which simply accumulate the expense of the record unnecessarily. But I think perhaps if they are referred to, they may be marked for [1064] identification specially, Mr. Clerk. In connection with this letter, which is received in evidence, the letter appears to be Exhibit 45-A, for identification.

The Clerk: Yes, your Honor.

The Court: And now it will be marked in evidence.

The Clerk: As 45-A-1?

The Court: Yes, I think so.

Mr. Cranston: No. That was simply 45-A, I believe.

The Clerk: Yes, for identification. Now you have a letter.

Mr. Cranston: That is right.

(Testimony of Adolph G. Sutro.)

(The document referred to, and marked Plaintiff's Exhibit 45-A-1, was received in evidence.)

Mr. Cranston: The other documents then will be simply noted as having been identified at the time that 45-A-1 was introduced in evidence?

The Court: That is right.

Mr. Cranston: Possibly to save further encumbering the record, I might read into the record the first sentence in another letter here, which was taken from Exhibit 45-E, for identification, directed to Mr. Sutro by the Byron Jackson Company.

Mr. Abbott: If your Honor please, if this is admissible at all, we will want the entire letter in the record.

The Court: What is the date? [1065]

Mr. Cranston: September 19, 1949, referring to a recent telephone conversation.

Mr. Abbott: We interpose the same objection that was interposed to the prior documentary offer, calling again the Court's attention to the date which this letter bears, namely, September 19, 1949.

The Court: Overruled.

Mr. Cranston: Then this entire letter will go into evidence?

The Court: Yes. He says he wants all of the letter in.

Mr. Cranston: That will be 45-E.

The Clerk: 45-E admitted into evidence.

(Testimony of Adolph G. Sutro.)

(The document referred to, and marked Plaintiff's Exhibit 45-E, was received in evidence.)

Q. (By Mr. Cranston): Mr. Sutro, have you prepared a list of pump requirements at the present time for your property? A. Yes.

Q. I show you a document and ask if this is the list? A. It is.

Mr. Cranston: Will you mark this as our next exhibit?

The Clerk: Yes. The next exhibit will be Plaintiff's Exhibit 46, for identification, or, rather, 46-A, for identification. [1066]

(The document referred to was marked Plaintiff's Exhibit 46-A, for identification.)

Q. (By Mr. Cranston): When was this list, which is marked Exhibit 46-A for identification, prepared, Mr. Sutro?

A. Since his Honor's ruling of last September.

Q. And it was prepared for what purpose?

A. It was prepared for the purpose of enabling an appraisal to be made as to the cost of these pumps in 1946 and as of today.

Q. Referring to the document, at the bottom of page 1 is a statement, "Pumps required No. 2"—

Mr. Abbott: We will object, your Honor, to this line of inquiry on the ground that this document is of recent origin, since the Court's ruling in September, is inconsistent with the two documents last received, and even if it were consistent,

(Testimony of Adolph G. Sutro.)

it would add nothing to them, if the Court is relying upon the dates in the earlier documents.

The Court: Objection sustained. What is the number of that, for identification?

Mr. Cranston: 46-A. If the Court please, at this time I would like to offer in evidence the blueprints which have been identified, beginning with Exhibit 44-A, and continuing through Exhibit 44-N, and the specifications for the residence which was marked Exhibit 44-I-4, for identification.

The Court: That does not include—— [1067]

Mr. Cranston: It does not include Exhibit 44-O, the typed list.

Mr. Abbott: Your Honor, we have a number of objections, some of which are general and apply to all of these documents, and then we have certain objections which are applicable only to selected documents in the group. If the Court planned a recess soon, I would be able to organize the documents with respect to the objections that are to be made during the noon recess. It is a rather cumbersome job, because some of these papers have particular characteristics that others don't.

The Court: Mr. Cranston, have you finished the examination on this line of inquiry as to equipment?

Mr. Cranston: No, your Honor. There was one other matter that I wished to inquire about. I don't know that I know what the Court's ruling is to be on it. I can proceed with a very few questions.

The Court: Is it a matter that will take an extended time?

Mr. Cranston: No, it will not take long.

The Court: We will suspend the ruling on that.

(Testimony of Adolph G. Sutro.)

Mr. Abbott: Thank you, your Honor.

Mr. Cranston: Will you mark this, please?

The Clerk: Plaintiff's Exhibit 47, for identification. [1068]

(The document referred to was marked Plaintiff's Exhibit 47, for identification.)

Q. (By Mr. Cranston): Mr. Sutro, at the time you purchased the property, did you intend to grow vegetables on the entire area, or only part of it?

A. Only part of it. The entire area was not suitable for vegetables.

Q. To what use did you intend to put the balance of the property? A. Grazing.

Q. And in general, what portion of the property was to be used for grazing?

A. In general, that portion of the property which was too steep for vegetable growing.

Q. Would the use of that part for grazing, and the use of the balance for vegetable growing, require the installation of any type of equipment?

A. Yes, it would require fences and gates.

Q. For what purpose?

A. To keep the cattle out of the vegetables.

Q. Did you prepare a plan in 1946 for the fencing of the property? A. No.

Q. Why not?

A. I can't conceive of preparing a plan of how to [1069] build a fence. It would seem to me you

(Testimony of Adolph G. Sutro.)

would just go out and build it without drawing up a plan.

Q. Have you prepared a plan for proposed fencing of the property during the year 1953?

A. Yes.

Q. I show you Exhibit 47, for identification, and ask if this is such a plan?

A. Yes, this is the plan.

Q. Will you state what the green line upon the chart or diagram indicates?

Mr. Abbott: This probably is the appropriate time for the Government to interpose its objection. I wanted counsel to be able to lay his foundation. However, we seem to be getting into the substance of the exhibit in the matter. Once again, this is a document of recent origin, your Honor, and there has been no objective manifestation whatsoever of an intention to fence this area whatsoever. This plan, as I recall, contains about 25,000 feet of fencing, with nothing in the record at all to indicate objectively the witness' intention in the year 1946.

Mr. Cranston: Might I point out that the witness has testified as to why there would have been nothing put down on paper, that it was not common practice to do so. It would appear that if you intend to have cattle and vegetables on the same property, a fence is as essential as the feed for [1070] the cattle. You would not make a diagram of the feed that you were going to feed the cattle, but it would be essential. It is something that you could not operate properly without.

(Testimony of Adolph G. Sutro.)

So if Mr. Sutro is to be made whole for the loss he sustained, this fence is definitely one item of his loss, and the reason why it was not put down is apparently as has been testified to by the witness.

The Court: Which fence is one item of the loss?

Mr. Cranston: The fence necessary to keep the cattle in.

The Court: I don't think so. If any fence is an element to be considered in estimating the damage, it must be the fence that was proposed and conjectured and in the mind of the owner at the time he acquired the property.

Now, we are presented with a plan which is delineated—it is not in the concept of the owner—it is delineated on a piece of paper, and I presume it will be attempted to be followed by certain specifications as to the type of fence, when there is nothing in the record to show that that was the type of fence, or was the fence that was in the mind of the owner at the time that he acquired the property.

Mr. Cranston: Well, if the Court would permit Mr. Sutro, I believe he can establish the facts.

The Court: No. I will permit you. You can argue the law in the case. He is only a witness.

Mr. Cranston: I mean, I think he can establish the fact [1071] that this fence was in his mind.

The Court: You ask the question, if you want to.

Mr. Cranston: I am asking if I may be permitted to do that.

The Court: Yes, if you think it is of any value after the Court's statement.

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Cranston): Mr. Sutro, I will ask you, did you intend in 1946 to construct a fence?

Mr. Abbott: Well, we, for the record, interpose the objection that the witness' mental state in the year 1946 is not relevant or material.

The Witness: Yes, I intended to construct fences on the ranch.

Q. (By Mr. Cranston): Does this plan portray on paper the fences which you intended to construct at that time?

A. That plan portrays on paper the fences which would be necessary to utilize the land for cattle and vegetables.

Q. Is it the fence which you intended in 1946?

Mr. Abbott: The same objection, your Honor.

The Witness: I had not made any drawings of the fence in 1946, and would not have done so. Unless it were for this suit, I would have gone out and built the fence.

The Court: How can you say now, Mr. Sutro—you are getting into an argumentative position, and this is the only way I can get at what is in counsel's mind in offering evidence [1072] of this type, even with the broad concept of this law—how can you say now, in 1954, that in 1946 you would have placed on this specific portion of that property the specific fence that you have delineated and that you expect to follow up by further specifications.

The Witness: Your Honor, to me it appears elemental in its simplicity. First, the type of fence would be the type of fence as used in the neighbor-

(Testimony of Adolph G. Sutro.)

hood, the more or less accepted type of fence. I had no ideas of putting in some special fence. This is the customary farm fence.

In regard to the areas covered, why, it is merely covering the area which is not devoted to or which is not suitable for truck farming.

The Court: What material of fencing did you have in mind in 1946?

The Witness: The customary barbed wire and steel post.

The Court: Barbed wire and steel posts. Don't you know there are many of these areas that are set apart for grazing where they have wood fences?

The Witness: Yes, your Honor. I have sold wood fence posts.

The Court: Then how can you say, without any recordation of your concept in 1946, how can you say in March of 1954, that you had this fence that is delineated here on this piece of paper in [1073] mind?

The Witness: Very simply, your Honor. When I purchased the ranch, a Mr. Theodore Wackerman, one of the most successful farmers in the Valley, assisted me in going over it, and the subject of the fencing came up. I had come more or less, we will say, from the neighborhood where redwood was more prevalent and had quite a usage as fence posts, and I mentioned the predominance of steel posts in the neighborhood, and he said they were the only thing to use down there, because in the event of a grass fire, your fence was not destroyed.

(Testimony of Adolph G. Sutro.)

It just happens that I can make that statement with authority.

The Court: I will sustain the objection. Is that all there was to this fencing?

Mr. Cranston: Yes, I think so.

The Court: I wanted to get to that point before the noon recess.

Now, you will devote the noon hour to looking these over, as I understand it?

Mr. Abbott: I will, your Honor. I will attempt to have them organized. Will they be available during the noon hour?

The Court: They certainly will be available when you want them.

Mr. Abbott: I had assumed the courtroom was locked.

The Court: And if your opponents want to be present, [1074] they may. At what time do you want to look at them?

Mr. Abbott: I would like to come in at about 1:30, your Honor.

The Court: We will have someone here at 1:30.

Mr. Abbott: Thank you.

The Court: Very well. 2:00 o'clock, gentlemen.

(Whereupon a recess was taken at 12:20 o'clock p.m., March 3, 1954, until 2:00 o'clock p.m., of the same date.) [1075]

Wednesday, March 3, 1954, 2:00 P.M.

The Court: Proceed, gentlemen.

ADOLPH G. SUTRO

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Redirect Examination

(Continued)

Mr. Cranston: Would your Honor wish to make any ruling on the offer previously made, of introducing of different blueprints in evidence?

Mr. Abbott: We are prepared to state our objection, your Honor, if we may.

The Court: Yes.

Mr. Abbott: First, with respect to all of the documents, we object to their admission in evidence because they are irrelevant and immaterial, because they contain and constitute hearsay evidence not within any exception to the hearsay rule.

Now, particular documents appear to be without the scope of the Court's earlier rulings in the matter, and will be discussed individually.

In the latter category, the first is Plaintiff's Exhibit 44-O, for identification, which consists——

Mr. Cranston: Pardon me, Mr. Abbott. That was not even offered in evidence. [1076]

Mr. Abbott: Well, it ended up on my table, and I assumed it was.

Mr. Cranston: But it is in for identification.

Mr. Abbott: Yes, but it was with the documents that were handed to me.

(Testimony of Adolph G. Sutro.)

Let me ask the same question, then, with respect to 46-A, which was a list of pumps.

Mr. Cranston: That was not included.

Mr. Abbott: That was not included. Finally, the fencing map, was that included in that offer?

Mr. Cranston: That was not included in that offer.

Mr. Abbott: All right. That will dispose of one class of documentary evidence.

The second group consists of the two charts, Exhibits 44-M and 44-N. Each of those charts contains lines and material added, according to plaintiff's testimony, to the chart subsequent to 1946, and, in fact, within the last few months, and, therefore, the charts and the material so added appear to be without the scope of the Court's prior ruling.

Mr. Cranston: If the Court please, the document, 44-M, the witness testified all the lines on that chart were placed on it in 1946.

Mr. Abbott: Is that M or N, counsel?

Mr. Cranston: That is M, the wiring system.

Mr. Abbott: Is my recollection of the record correct [1077] with respect to -N, that certain lines were added thereto in recent months?

Mr. Cranston: Yes, your recollection is correct that the witness stated that the lines to the septic tank were added in recent months, but that a septic tank had been contemplated as a part of the residence in 1946.

The Court: The objection is overruled in toto. They will be received and marked filed as exhibits.

(Testimony of Adolph G. Sutro.)

The Clerk: Your Honor, for my record, that is Exhibits 44-A to 44-N, inclusive?

The Court: Now, Mr. Abbott, is the clerk correct in that?

Mr. Abbott: No, your Honor. The specific objections have only been interposed with respect to 44-M and -N.

The Clerk: Oh.

Mr. Abbott: We have not disposed of other specific objections.

The next offer was 44-G, which is a list of tools and equipment, which in the witness' testimony were described as items indicated upon a chart prepared in 1946, namely, plaintiff's 44-D, for identification. However, on careful inspection of the list, we find that the majority of items there appearing are items of tools, small tools, accessories, equipment, which in nowise appear on the chart prepared in 1946, and, therefore, fall in the same category as the offer [1078] or the exhibit identified, but not offered, relating to miscellaneous items of farm equipment. We feel that this list of equipment, in so far as it contains items other than the items appearing on the chart prepared in 1946, is within the scope of the Court's other ruling.

The Court: Of course, I haven't the instruments here. Do you agree that the list containing items in Exhibit 44-G are in no way delineated or represented upon the blueprint, which I haven't before me and can't tell you what the exhibits are?

Mr. Cranston: No, your Honor. It is my under-

(Testimony of Adolph G. Sutro.)

standing that this list refers to items which are listed on the exhibit. Now, I believe that there may be certain details set forth in that list, which details do not show in the exhibit. The witness can probably answer your Honor's question exactly as to any difference there may be between the two. I would not feel competent to do so.

Mr. Abbott: I think this is the general nature of the problem, your Honor. On the exhibit an item such as a lathe will appear, and then in the list of tools we find all sorts of items which are used in conjunction with a lathe, hand tools, and so forth, things which are auxiliary to the use of the lathe, but which are in no way reflected on the chart prepared in 1946.

The Court: Mr. Sutro, have you heard the inquiry? [1079]

The Witness: I have.

The Court: What is the situation with respect to it?

The Witness: The situation is, your Honor, that you cannot run a lathe unless you have a chuck.

The Court: I think that is self-evident. But is this the situation: that the only reason that the list, which is Exhibit 44-G for identification, is offered in connection with or in reference to Exhibit 44-D, for identification, is because it is obvious to anyone intelligibly looking at the blueprint and seeing thereon noted a lathe, that the accompanying instrumentalities would perhaps necessarily be re-

(Testimony of Adolph G. Sutro.)

quired to be attached in order that the lathe function?

The Witness: They are essential, your Honor. I do not think there are any hand tools in that list.

The Court: I haven't examined it. The objection will be overruled.

Mr. Abbott: Your Honor, with respect to the chart the Court is now viewing, which is 44-D, and all other charts relating to the shop building, which include 44-G, 44-E, 44-H, 44-D, and 44-F, there is the additional objection that the Court's ruling on September 29, 1953, at page 111, beginning at the middle of line 9 and running to the middle of line 11, is in part as follows:

"If there is an increase in the cost of buildings that were necessary to do the job, I think the [1080] additional cost over the estimate which he has, as indicated by the plans, drawings, and specifications, is a measure of damages in this case."

This shop, from the testimony of the witness and from an examination of the plans which he presents, is far from being an agricultural installation. The witness says it was an experimental shop in part, and surely the Court after examining the many, many items of power tools, items of equipment necessary for shaping metal and performing similar functions, will conclude that that was not a shop and not equipment needed to do the job, to perform a farming operation. They represent a hobby and perhaps an experimental shop; perhaps the sort of thing that a gentleman farmer might

(Testimony of Adolph G. Sutro.)

want for his own amusement, and have no reasonable relation to the economic endeavor of growing vegetables or any other crop. On that additional ground we object to the exhibits last described.

The Court: Without indicating any weight to be given to the proffer, the objection is overruled.

The Clerk: For the record, may I have those exhibit numbers again, please? My record shows that 44-D and 44-G have been admitted in evidence.

Mr. Abbott: I believe that would also include -B, -C, -E, -F, and -H, all relating to the shop.

The Clerk: -B, -C, E, -F, and -H?

Mr. Abbott: According to my records, [1081] yes.

Well, what I have read as -G and looks like -G may be -B. Can you identify it, Mr. Clerk?

The Clerk: This is 44-C, and that is 44-H. Wait a minute. Excuse me. That is 44-D; 44-C and 44-D. 44-C and -D in evidence.

The Court: Wait a moment, Mr. Abbott.

Mr. Abbott: Yes, your Honor.

The Court: The clerk has not got the record.

The Clerk: I think I have the record now, your Honor.

The Court: Of all of the blueprints?

The Clerk: Of all in evidence, yes.

Mr. Cranston: My notations are——

The Court: We will have Mrs. Zellner read the record. Now, all of these blueprints that are now before you, Mr. Clerk, have been identified?

The Clerk: Yes, your Honor.

(Testimony of Adolph G. Sutro.)

The Court: And I presume they are marked in sequence alphabetically?

The Clerk: Yes, your Honor.

The Court: Now, whatever they are, they are all received in evidence, and the objection is overruled as to that.

The Clerk: Yes, your Honor. That is 44-B, 44-C, 44-D, 44-E, 44-F, 44-G, and 44-H in evidence.

The Court: So ordered. [1082]

(The blueprints heretofore marked Plaintiff's Exhibits Nos. 44-B, 44-C, 44-D, 44-E, 44-F, 44-G, and 44-H for identification, were received in evidence.

Mr. Abbott: Your Honor, the next group of documents consist of documents relating to two residence structures. First, a group of blueprints relating to the residence marked Plaintiff's 44-I, for identification, the specifications for the residence marked 44-I-4, and a plan for the guest house marked 44-J. With respect to those documents we have the additional objection that the documents relate to residential structures, and, therefore, are in no manner or sense to be considered in computing the damages relative to the alleged commercial operation contemplated by the plaintiff.

Now, we have a second objection to those plans, and also to all of the remaining plans, consisting of 44-J-1, 44-A, and 44-K and 44-L, the latter group relating to certain other structures, namely, that both the residence structures and the group of

(Testimony of Adolph G. Sutro.)

structures last identified have not been commenced, no work has begun, and the Court's ruling of September 29, as the Government understands it, is a ruling that the structures in progress, as described by Mr. Cranston, would be the structures to be considered by the Court, not structures which have never been begun even to this day.

The Court: Now, let's see what the Court said on page 111, commencing with line 7 of the transcript of September [1083] 29, 1953:

"Now, whatever he spent, whatever he has to spend now or after the nuisance was abated, in other words, after the water was not contaminated by this noxious effluent, if there is an increase in the cost of the buildings that were necessary to do the job, I think the additional cost over the estimate which he has, as indicated by the plans, drawings and specifications, is the measure of damages in the case. I think they are part of the detriment that has been caused by reason of the negligent acts of the government officers in not removing this contaminating effluent from the stream of Pilgrim Creek."

I think that is sufficiently broad to cover the proffers and the objection is overruled.

(The documents heretofore marked Plaintiff's Exhibits Nos. 44-A, 44-I, 44-I-4, 44-J-1, 44-K and 44-L for identification, were received in evidence.)

Mr. Abbott: May I call the Court's attention to

(Testimony of Adolph G. Sutro.)

another part of the record in that hearing?

First, I would call the Court's attention to that portion of the record of September 29th which was read by the Court this morning, which had some bearing upon this point, and I know it is in the Court's mind, but there is a separate [1084] remark of the Court very close to the end of the record.

The Court: Upon what page?

Mr. Abbott: I am just reaching for it now. It is page 117, beginning with line 17:

"Mr. McCall: May it please the Court, might I ask one question? I didn't quite understand as to the item of increase in building costs. I don't know that I know exactly what that refers to. I would like to ask——

"The Court: It refers to matters that Mr. Cranston stated had been in process of construction.

"Mr. McCall: That is the——

"The Court: I don't mean to say that unless the case is going to be tried immediately that additional facilities would be included within the statement of the Court. I think he would be entitled to show the increase in the cost of buildings and appurtenances that he has plans for, or has made contracts concerning, or anything of that character.

"Mr. McCall: That would include any type of improvement, or would it be limited to that which had to do with the condition of water or the handling of water? [1085]

"The Court: It would be in connection with farming activities, husbandry. It wouldn't relate

(Testimony of Adolph G. Sutro.)

to the house, for instance, the residence, and so on."

I have gone on reading past the point which I wanted to emphasize, because, in fairness, the latter statements are not quite as close to the point as the Government is now seeking to assert, but I do feel that the Court's one remark on page 117, at lines 21 and 22, are the specific answers to the point now under discussion, and, incidentally, the remarks on page 118 seem to be applicable to the residence structures as well.

The Court: The ruling will stand.

Mr. Cranston: Do I understand, then, your Honor, that the blueprints as to all the buildings which have now been introduced in evidence are received, or was that merely as to certain ones that Mr. Abbott has referred to?

The Court: It refers to those that have been mentioned by Mr. Abbott, and that have been ruled upon. They haven't been before me, and I am not going to spend the Court's time in doing work which should have been done by the attorneys. It refers to those instruments that counsel has referred to, and which he has referred to by number, for identification.

Mr. Abbott: To the best of my knowledge, your Honor, I at this time have referred to the entire offer. If I have [1086] failed to do so, it is through inadvertence. Is there any document not referred to?

Mr. Cranston: I believe you did not refer to 44-K-1, and I would simply ask that the offer into

(Testimony of Adolph G. Sutro.)

evidence be admitted for all documents in this series.

The Court: What is 44-K-1?

Mr. Cranston: It is a part of the storage shed, your Honor. There were two prints of the storage shed, and I believe you only referred to 44-K in your objection.

Mr. Abbott: I appreciate your calling that to my attention, and would like to extend the objection to include the document last described by counsel.

The Court: The objection will be overruled in toto as to all of the series which counsel has expressly discussed and mentioned in his objection.

Mr. Cranston: And the offer that was made, will then be—that is, the documents included in the offer, as to any which he did not object to will also be admitted in evidence?

The Court: Of course, if they have been offered and have not been objected to, they will be received.

The Clerk: Your Honor, may I ask a question? With respect to 44-I-4, for identification, a series of papers, specifications for a residence, that was not referred to, was it?

Mr. Cranston: Yes, that was referred to. [1087]

Mr. Abbott: I would like to mention that my objection began with a general objection to the entire offer, your Honor, followed by certain specific objections.

The Court: The court understands that the Government objected to everything, and its ruling has

(Testimony of Adolph G. Sutro.)

been made in accordance with its understanding, and the clerk will ascertain what that is by looking at the exhibits at such time as he has convenience, not during the session of the court.

Q. (By Mr. Cranston): Mr. Sutro, I show you two additional documents, and ask you what these documents represent.

A. One represents a day reservoir located at the top of the mesa. The other one represents a day reservoir located at Camp Pendleton Highway.

Q. When were these particular documents prepared?

A. They were prepared by the Soil Conservation Service on November 5, 1953.

Q. Had you had conversations with the Soil Conservation officials prior to 1953? A. Yes.

Q. Are those the conversations concerning which you testified and Mr. Tedford testified on the first day of this trial? A. Yes.

Mr. Cranston: I would ask to have these marked for identification as our next exhibits. I believe they would [1088] be 48 and 48-A.

The Clerk: 48 and 48-A, both for identification.

(The documents referred to were marked Plaintiff's Exhibits Nos. 48 and 48-A, for identification.)

The Court: Now, I want to refresh the court's recollection on that. Mr. Cranston, were either of these proffered exhibits, for identification, placed before Mr. Tedford?

(Testimony of Adolph G. Sutro.)

Mr. Cranston: These documents were not placed before Mr. Tedford, no. That is correct.

Mr. Tedford testified that he had had conversations in 1946 with Mr. Sutro, and Mr. Sutro testified to the same effect, but Mr. Tedford did not state that he had seen these documents.

The Court: I think we will proceed, and explore the reason why they were not produced at that time.

Mr. Cranston: Yes.

Q. (By Mr. Cranston): Now, Mr. Sutro, during the course of your conversations from time to time with the Soil Conservation authorities, was the location of the reservoirs changed, or did it remain the same as during your first conversations with them in 1946?

Mr. Abbott: I will object to that as assuming a fact not in evidence, namely, that there was a location of reservoirs, or even that there were specific reservoirs. That question assumes a certain degree of detail and specification [1089] which has nowhere appeared in the record.

The Court: Overruled.

The Witness: The locations were changed.

Q. (By Mr. Cranston): When were they changed?

A. I do not remember the exact date.

Q. Can you fix it with any degree of accuracy?

A. Well, the new theory of location of the reservoirs was discussed perhaps a year after the original discussion. Instead of putting a reservoir on the top of a hill and pumping all the water not only to the

(Testimony of Adolph G. Sutro.)

highest elevation, but above the highest elevation, I wanted to put the reservoir on the side of the hill, so that my pumping costs would be lower, and feed the highest part of the land, or be able to feed the highest part of the land only when the reservoir was full.

The Court: Wait a minute.

The Witness: Yes, excuse me, your Honor.

The Court: You were asked about the time, the date.

The Witness: It was within a year; say, in '47.

The Court: Was it before September of 1952?

The Witness: Oh, certainly.

The Court: Well, certainly. I don't know.

The Witness: Excuse me, your Honor. I apologize.

The Court: Proceed.

Q. (By Mr. Cranston): The change was made, then, some time in the year 1947? [1090]

A. As close as I can recall the date.

Q. And has there been any change in the location of the reservoirs since some time in 1947?

A. Now, in order not to mislead the court, the socalled road reservoir was designed and contemplated after the new well made the irrigation of that section of the ranch a practical matter.

Q. And that is the reservoir which is illustrated on No. 48, for identification? A. Yes.

Q. And the mesa reservoir is on 48-A, for identification? A. Yes.

Q. So 48-A was the one which had been discussed in 1946 to 1947? A. Yes.

(Testimony of Adolph G. Sutro.)

Q. And 48 was first discussed when?

A. When the new well came in; in '50, or rather, I should say '51, because the well did not come in until late in 1950. It was December, if my memory is correct.

Mr. Cranston: We will offer these documents in evidence, your Honor.

Mr. Abbott: To which we object, your Honor, on the ground that, in addition to their immateriality and irrelevancy, in the Government's view of the law of damages [1091] applicable to the case, they are without the scope of the court's rulings fixing damages, because they were prepared in late 1953. For the further reason, that the one document more particularly described by the witness represents a state of mind which the witness did not even achieve until late 1950.

Mr. Cranston: Of course, as to the last objection the well which made the reservoir necessary was not dug until 1950.

The Court: I will overrule the objection.

The Clerk: 48 and 48-A admitted into evidence.

(The documents heretofore marked Plaintiff's Exhibits 48 and 48-A, for identification, were received in evidence.)

Q. (By Mr. Cranston): Mr. Sutro, I believe on the first day of the trial you testified in connection with Exhibit 39, and stated what the blue lines and the red lines upon this exhibit represented, but that

(Testimony of Adolph G. Sutro.)

you did not at that time testify specifically to what the green lines represented.

A. The green lines represented pipe which would have been installed prior to the time of the bringing in of the well in December of 1950, which made it unnecessary to use those connections under this plan.

Q. That is, after the discovery of the other wells, it became unnecessary to install these particular sections which are marked in green, so that your present plans would [1092] not install that pipe?

A. That is correct.

Q. And in the claim which you make at the present time against the Government, are you crediting the Government with the cost which would have been incurred if those pipes had been installed in 1946?

A. The Government is being credited with that cost.

The Court: In your question, Mr. Cranston, you spoke about the discovery of other wells. Did you mean the location of this third well, so-called?

Mr. Cranston: I meant the location of, I believe it was, the second well, the second and the third wells. You see, when Mr. Sutro bought the property, there was one well, plus the pump that was in the bed of Pilgrim Creek, and then there were later two additional wells dug, as a result of which Mr. Sutro—maybe I shouldn't say this, but I believe he has testified to it—did not intend to pump from Pilgrim Creek, so that the cost of the pipeline to connect to that, is excluded from our calculations, and in our calculations is credited to the Government as an off-

(Testimony of Adolph G. Sutro.)

set, because we do not have to now spend that money.

The Court: What misled the court was the use of the word "discovery."

Mr. Cranston: That was a very loose term.

The Court: I wanted to understand what you meant is [1093] all.

Mr. Cranston: If the court please, I believe that concludes our direct examination of Mr. Sutro upon this phase of the case.

Now, he has incurred certain out-of-pocket expenses as a result of the acts of the government. We have his books here in court, and we also have a summary statement. It will take a considerable period of time if we try to go into the matter of those expenses here in court.

I am wondering whether the court would wish us to endeavor to consult with opposing counsel as to any of those items, or whether, if counsel cannot agree, the court on that phase of the case would care to have an accountant examine the books and advise the court as to the results of his investigation, as to what items he might deem proper, either after having heard rulings of the court before his investigation or afterwards.

We are ready to follow whatever procedure the court wishes to expedite the matter.

The Court: Maybe I can direct an inquiry to you which may be helpful. Are those so-called out-of-pocket expenditures such as Mr. Sutro enumerated when he said he came down from San Francisco, and went back and forth, and so forth?

(Testimony of Adolph G. Sutro.)

Mr. Cranston: That is a part of the expense; the expense which he incurred in going from San Francisco to San [1094] Luis Rey, as a result of not being able to live upon the premises. A part of the expenses would represent labor charges for the care and maintenance of the property and its use for dry farming. A part would represent the expenditures which he made for seeds, sprays, fertilizer, spraying weeds, and so forth, erosion control, depreciation on equipment on the property, the rental which he was obliged to pay for the storage of equipment, electricity, and other expenses.

Now, as I say, we can go into them in as much detail as the court desires, because his books are here. It would be a lengthy process if we itemize them, however.

The Court: I don't want the court to be put in the position of controlling the way litigants present their cases, or directing the presentation, in civil litigation particularly. I don't know what the Government's attitude is going to be on such a matter, whether they are going to rest upon their general objection, that the plaintiff has no right of recovery at all, or whether there is some specific objection to that line of evidence.

Mr. Abbott: I know nothing more about the evidence that is to be presented, your Honor, than we have just heard from Mr. Cranston, but, in the opinion of the Government, the items there enumerated are not properly recoverable in an action of this character, even assuming liability; so that our ob-

(Testimony of Adolph G. Sutro.)

jection would go, in particular, to the evidentiary problem [1095] or substantive problem of what damages are recoverable by way of mitigation. Are traveling expenses recoverable, are the costs incident to growing the crop the proceeds of which have been received by the plaintiff recoverable, and so forth, with respect to each class of items?

Mr. Cranston: Possibly, your Honor, I could ask the witness to testify as to the nature of the expenditures in certain classifications, without going into detail as to how many dollars were involved, or the specific events, and your Honor might then be able to make a ruling, and if the ruling is favorable, we could then possibly work out a solution on the exact number of dollars.

The Court: Of course, Mr. Abbott was not present at the hearing in San Diego, and naturally, he doesn't know what occurred there and what Mr. Sutro testified to there. The court does have a recollection as to what occurred there, and what he testified to concerning the matters under discussion.

I don't believe those matters are allowable in this action. They fall in the same category as his claim for interest, and some other claims that have been asserted.

Just to assign one reason, and not to assign it for the purpose of provoking argument on it: Living was pretty good in San Diego. It might not have been as pleasurable to a San Franciscan as San Francisco, but it was a pretty good place in which to live, and I don't think that in an action [1096] of

(Testimony of Adolph G. Sutro.)

this kind, when a man chooses to live in a place where he has lived most of his life, because he has to continue to do that and come back and forth, that the tortfeasor should be mulcted as to such additional costs. We would have to get into his method of living, and I don't believe that is a proper matter in these cases, and if the evidence is offered, and it is offered properly, and it is objected to properly, I shall sustain the objection.

Mr. Cranston: Your Honor, for the sake of the record I would like to ask Mr. Sutro certain questions as to expenses which he incurred.

The Court: Why don't you make an offer of proof, instead of asking him, because it will take up time in cross-examining him, and all of that.

Mr. Cranston: Yes.

The Court: I am not criticizing counsel for wanting to cross-examine, because I think it is his duty to do so, but what I am trying to do is to expedite the trial with security and reasonable effort.

Mr. Cranston: If the court please, then at this time the plaintiff offers to prove through the witness now on the stand, the plaintiff himself, that during the period from January 17, 1946, to the date of the trial, the plaintiff has incurred expenses in the following amounts:

Supervision of work done upon the property which resulted [1097] in no benefit to the plaintiff of a permanent nature, \$170;

Labor, discing and spraying, which likewise resulted in no permanent benefit, \$3,571.92;

(Testimony of Adolph G. Sutro.)

Farm labor, resulting in no benefit to the property of permanence, \$2,722.19;

For seed, sprays, and fertilizers, spent for erosion control, not for permanent benefit, \$441.87;

For fees for accountants and legal fees not connected with this litigation, but attorneys employed in prosecution of rights involving Pilgrim Creek prior to this litigation, \$820.63;

Depreciation of equipment, \$4,772.60;

Depreciation on automobiles and trucks, \$3,013.73;

Auto and truck maintenance, \$600.99;

Electric bills upon the premises, stand-by charges, and so forth, \$95.43;

Repairs to the equipment on the premises, maintenance and supplies, \$691.68;

Rental of equipment, \$881.47;

Telephone and telegraph, \$455.05;

The rent of a warehouse in which to store goods which would otherwise have been stored within the buildings contemplated and set forth in these plans, \$2,440;

Insurance on premises, that is, not on the buildings on the premises, but other insurance, [1098] \$417.61;

Traveling expenses of \$15,977.66;

Petty cash expenditures of \$300;

Or a total of \$37,382.85.

That does not include many additional charges which the plaintiff has sustained but which we do not wish to press.

Mr. Abbott: At this time the Government objects

(Testimony of Adolph G. Sutro.)

to the offer of proof on the ground that the evidence tendered is irrelevant, incompetent and immaterial, that it does not constitute evidence of damages recoverable under the Tort Claims Act, and that there has been no proper foundation laid for such evidence as evidence in mitigation of damages, or otherwise.

The Court: The objection to the offer will be sustained.

Mr. Cranston: That I believe concludes the present examination of Mr. Sutro.

In order that I might determine when to have our next witness available, Mr. Abbott, could you advise me whether you believe you will take the afternoon for cross-examination?

Mr. Abbott: It seems more likely than not.

Mr. Cranston: That is, I can call the witness, but I hate to call him here and have him sit if he will not be needed.

Mr. Abbott: That is, considering not only cross, but your redirect. [1099]

Cross-Examination

By Mr. Abbott:

Q. Mr. Sutro, in your direct examination you gave the court your opinion with respect to the rental value of the ranch owned by you during the years 1946 through 1952, and in expressing that opinion you assumed a pure water source. Now, were you also assuming and expressing that opinion that the pure water source consisted in part of pure water flowing from sewage disposal plants 1 and 2?

(Testimony of Adolph G. Sutro.)

A. I do not understand your question, Mr. Abbott.

Q. Well, let me see if I can clarify it. In expressing your opinion, did you assume that there was pure water flowing in Pilgrim Creek during the years in question, but that that pure water came in whole or in part from sewage disposal plants 1 and 2? A. No.

Q. Your opinion then was based upon the assumption that there was no water in Pilgrim Creek coming from either sewage disposal plants?

A. That is correct.

Q. Have you leased the property during the years 1946 through 1952, Mr. Sutro?

A. Partially, or occasionally. I don't quite know the word to use.

Q. Well, now, I think you testified that an important [1100] factor in your estimate of rental value was the availability of water for use on the premises at minimum expense. During the period of January, 1946, through November, 1950, what was the source of that water which you considered in forming your opinion?

A. The well which was on the place at the time of purchase, plus the record of the creek production during the ownership of Mr. Ikemi.

Q. And what was the production of the well in terms of gallons per minute?

A. The production of the well was estimated at 300 gallons a minute on tests. To be exact, I believe

(Testimony of Adolph G. Sutro.)

it was 296 gallons a minute. It was practically 300, to all intents and purposes.

Q. And what was the yield which you assumed to be available from Pilgrim Creek in terms of gallons per minute?

A. If my recollection is correct, it was 225 gallons.

Q. Making a total of approximately 425 gallons per minute of water available, Mr. Sutro?

A. No. You asked me what—if my memory is correct—what the test of the well showed, or what it would produce, and I told you in round numbers 300 gallons a minute. That with 225 gallons from Pilgrim Creek would be——

Q. I stand corrected. 525 gallons per minute?

A. Yes, Mr. Abbott. [1101]

Q. Now, are you aware of the source of water employed by your neighbor, Mr. Zanhiser?

A. Somewhat.

Q. And are you familiar with artesian wells on his property?

A. I have never made an investigation of his property, Mr. Abbott.

Q. Well, do you know offhand whether or not there are artesian wells there?

A. I believe Mr. Zanhiser testified under oath at one time that he had one that produced 75 gallons a minute.

Q. And that artesian well is located within a few hundred feet of the northeasterly boundary of your property, is it not? A. No.

(Testimony of Adolph G. Sutro.)

Q. Where is it located with respect to your property?

A. It is located some hundreds of feet from the southeasterly boundary.

Q. Approximately how far?

A. I never measured.

Q. Isn't it a fact that Mr. Zanhiser has more than one well in that area? A. Yes.

Q. When did you first lease the premises for agricultural purposes? [1102]

A. I do not remember offhand.

Q. Do you have records with you which will refresh your recollection?

A. I believe I have records. I also think it is a matter of record in the transcript of this case.

Q. Well, if you have a record available which will refresh your memory, please refer to it.

The Witness: May I leave the stand, your Honor?

The Court: Yes.

The Witness: Would you have the question read?

Mr. Abbott: The reporter will read it to you.

(The question referred to was read as follows: "Q. When did you first lease the premises for agricultural purposes?")

The Witness: During the year 1948. Or may I change that? I cannot tell you the year I rented it. I can tell you the year I received the income.

(Testimony of Adolph G. Sutro.)

Q. Well, can't you fix the approximate date that the leasing commenced?

A. No. Well, if the court would like me to take the time, I can probably go through my records and see at what date the income was deposited. This merely shows it as income received during the year 1948. It does not show the date of the bank deposit.

Q. Did you lease the property pursuant to a written [1103] instrument of any type?

A. I only recall one instance of a written instrument. It was produced in court, and shows a cancellation clause in order that we could proceed with the improvement of the ranch as soon as the Navy went ahead with the current plan.

Q. Was the first leasing pursuant to a written instrument? A. No, I do not think so.

Q. If it was an oral lease, what was its term?

A. The term for a portion of the ranch was 25 per cent of the crop.

Q. By "term," I mean what period did it cover—one year, two years?

A. One year. I thought you said "terms," not "term."

Q. Did you receive the rent at the approximate expiration date of that one-year oral lease?

A. I am unable to answer that question. I received the rent, but I cannot tell you as to the exact time from memory.

Q. Did the lease begin any time in the year 1946?

A. No, I do not think it did. I think the lease began in 1947.

(Testimony of Adolph G. Sutro.)

Q. And what was the crop to be grown pursuant to that percentage type lease?

A. Sudan grass. [1104]

Q. And what time of the year do you plant Sudan grass?

A. If I remember correctly, it was planted in the spring of—excuse me. Are you asking me at what time of the year is Sudan grass planted—

Q. That is the question.

A. —or at what time was it planted on my ranch?

Q. Suppose you answer both questions.

A. I am not qualified to testify as a farmer.

Q. With respect to the latter question, what time of the year was it in fact planted on your ranch?

A. I believe in the spring of 1947.

Q. And your arrangement of leasing had been consummated prior to the time the crop had been put in?

A. Naturally, yes.

Q. How many acres were so planted?

A. That part of the bottom land which had not been rendered useless by alkali or underbrush, brush which had overgrown the land, etc.

Q. How many acres were planted, Mr. Sutro?

A. I do not know. I said that part of the bottom land on which it was capable to plant the Sudan grass.

Q. Was it 90 acres?

A. I would doubt it. I can say no without even giving that question much thought.

Mr. Abbott: May I have Exhibit 33, please? That is [1105] that large map with the red lines on it.

(Testimony of Adolph G. Sutro.)

It won't be a blueprint. It will be a white paper map.

(The document was handed to counsel.)

Q. (By Mr. Abbott): Calling your attention now to Plaintiff's Exhibit 32, which contains some areas delineated in red, was the Sudan grass crop you have described planted in the area marked 1?

A. Yes, in portions of the area marked 1.

Q. It was not planted in all of 1? A. No.

Q. How much of 1 contained that Sudan grass area, marking, if you will, with a pencil the area in Section 1 which was so planted?

A. I would be unable to do so, Mr. Abbott, because I testified the area which was not planted was the area which was alkaline, covered with underbrush, and growth.

Q. Mr. Sutro, you are a very intelligent man. Didn't you, in making arrangements with your tenant or in viewing the crop in which you had an interest, ever form an estimate as to the acreage planted?

A. No, I only formed an estimate as to the tonnage received when I got the scale weight.

Q. Was any of the Sudan grass planted in area No. 6 on the chart we are viewing?

A. To the best of my recollection, it was planted in a [1106] portion of that piece.

Q. Was any of it in area No. 5?

A. Yes. That is where some of the finest of the Sudan grass was raised.

(Testimony of Adolph G. Sutro.)

Q. Was all of area No. 5 planted to Sudan grass?

A. I would say a very large part, because there was not much undergrowth, and it was up above the area which had been affected by alkali.

Q. Was area No. 4 planted to Sudan grass?

A. Yes.

Q. All of it?

A. Yes, that field was in fairly good shape, as I recall.

Q. Were there any other areas on the chart you are now viewing which were planted with Sudan grass?

A. I believe you have asked me about this area, this area, this area, and this area (indicating). Is that correct?

Q. It is.

A. I do not recall any other areas.

Q. Was the total acreage more or less than 50 acres?

A. Mr. Abbott. I am sorry, I am not able to make intelligent estimates of land measurements by inspection.

Q. Did the tenants make any representations to you as to the acreage which would be planted with Sudan grass? [1107]

A. The only recollection I have is that the tonnage was unbelievably high. I believe, in fact, we still have some samples of some of it which was 10 feet high in something like, I believe, 12 weeks. I would also like to check that statement in case you wish to go into detail.

(Testimony of Adolph G. Sutro.)

Q. How long was the Sudan grass on the land?

A. That was about the length of time.

Q. About 12 weeks?

A. That is my recollection.

Q. I believe you testified that you did receive records of the gross production of that crop?

A. Yes. I was paid on a tonnage basis.

Q. Do you have those records with you today?

A. No. No, I wouldn't have those records with me, I don't think. No, I wouldn't have the scale weights at this late date.

Q. Do you have them at any place, not necessarily in this courtroom, but are they in your possession at any point?

A. Well, as it is not my habit usually to throw away papers, unless they are memoranda in my own writing, they are probably in existence somewhere, but I don't know where.

Mr. Abbott: Well, I had better stop at this point. Mr. Cranston, my understanding was that all original records relative to crop production would be produced at this hearing. [1108]

Mr. Cranston: We have the records as to the receipts, the gross receipts that Mr. Sutro obtained, and as to how many tons were represented by that many dollars, I do not believe that we have the records. I thought that your inquiry was as to the number of dollars received.

Mr. Abbott: Perhaps there was a misunderstanding on that point.

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Abbott): Mr. Sutro, are those records at your home in San Francisco?

A. Mr. Abbott, I have no home. They are stored somewhere in San Diego County, and, frankly, and I am not trying to avoid the question, I don't know where they are.

Q. Do you have an independent recollection of the yield?

A. With the exception that it was considered very heavy, that photographs of the yield were taken and published in one of the farm journals, I cannot tell you the yield in tons per acre. In fact, it should be—it is self-evident I can't, because if I don't know the acreage, why, the total tonnage of the hay would not mean much in relation to tons per acre.

Q. Well, do you know what the total tonnage was?

A. No. I said I did not have the weighing slips with me, and——

Q. The question was directed to your independent recollection, [1109] Mr. Sutro.

A. Yes. I can tell you how much cash I got.

Q. How much cash did you get?

A. In 1948 I received \$2,686.60 for my percentage of the hay crop.

Q. By hay, you mean Sudan grass?

A. Yes, yes.

Q. Now, if the first lease was an oral lease for one year, and the Sudan grass was on the land for the period of weeks described by you, were there any

(Testimony of Adolph G. Sutro.)

other crops planted during that period of leasing?

A. Not to my recollection.

Q. Were there subsequent leases of the property. A. Yes.

Q. What was the effective date of the next lease?

A. Well, I suppose there was a lease for the year 1948.

Q. And was it effective on the first day of that year?

A. I have no independent recollection as to that being the case or not being the case. I am merely assuming that it was a January to January lease.

Q. Was that lease oral or written, Mr. Sutro?

A. I believe that was the only written lease, because it was my desire to have a cancellation clause in the lease, so that I could proceed with the improvement of the ranch, the current plan of the Navy being believed to be imminent. [1110]

Q. Do you have that lease with you today?

A. I believe it is a matter of record in this transcript.

The Court: I think it was, and I was trying to find it, but I couldn't find it in the record. But that does not mean it is not there.

Mr. Cranston: It was at least referred to, and I thought it was introduced in evidence, but my recollection may be faulty in that, too.

Mr. Abbott: I did not pick it up in reading that transcript, but there is a lot of detail in it, so I could have missed it.

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Abbott): In any event, do you have that document here today?

A. No, I do not.

Q. By the way, in the first lease for purposes of Sudan grass, were cattle grazed upon the area upon which the grass was grown after the grass was cut? A. Yes.

Q. How many cattle?

A. I don't recall, but I believe in the first part of the case I estimated that 200 head had grazed there, and subsequent investigation leads me to think that statement was approximately correct.

Q. Whose cattle were those? [1111]

A. They either belonged to the Whelan Dairy, or to Rex McDaniel.

Q. And what compensation did you receive for that privilege of grazing cattle on the land?

A. \$366.25.

Q. Was that a gross figure? Did that include the total compensation for all the cattle?

A. Yes.

Q. By the way, are you referring to an original record, Mr. Sutro?

A. No, it is not an original record.

Q. Are the original records here today?

Mr. Cranston: Yes, they are here.

Mr. Abbott: May we have them?

Mr. Cranston: Mr. Sutro, will you give them to Mr. Weymann for his inspection?

(The documents referred to were handed to counsel.)

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Abbott): Now, Mr. Sutro, did the sum of \$2680.60, which you have testified to, received on the Sudan grass, represent a one-quarter share of the product, or did it represent a cash settlement not based on a one-quarter share?

A. No, that was a one-quarter share.

Q. Did you receive anything else of value in consideration for the leasing in the year 1947, in addition to the [1112] two things you have already mentioned?

A. No.

Mr. Abbott: Now, you testified that in the year 1948 there was a second lease. You think it was in writing. And I will now inquire if counsel has been able to find that document.

Mr. Cranston: We haven't. We didn't know you wanted it until now, and I have not found it during the court session this afternoon.

Q. (By Mr. Abbott): Who was the lessee on that lease?

A. Rex McDaniel.

The Court: Let me look through that again. I think that was mentioned in the San Diego hearing.

Mr. Cranston: I know it was mentioned.

Mr. Abbott: I recall it being mentioned, your Honor, but I do not recall the lease.

The Court: No, I could not find it either. I looked for it just casually here. Proceed.

Mr. Abbott: Is there a pending question?

(The record was read.)

Q. (By Mr. Abbott): Who was the lessee named in that lease?

A. Rex McDaniel.

(Testimony of Adolph G. Sutro.)

Q. And did the lease specify the crop to be grown by the lessee? [1113]

A. Oh, no. No, I can testify to that, it did not specify the crop.

Q. Was that a cash rental or a percentage type lease?

A. That was a percentage type lease.

Q. What crop was in fact grown by Mr. McDaniel?

A. My recollection is that the crop grown was oats and barley.

Q. How many acres of each?

A. I cannot answer that question. The same conditions applied as to the former crop.

Q. Can you form any estimate as to the acreage planted in oats, Mr. Sutro?

A. I cannot.

Q. Have you any estimate as to the acreage planted in barley?

A. No, because I forget which areas were planted to which.

Q. Then do you have an estimate as to the total acreage planted to both crops?

A. No. I gave you my reason earlier.

Q. Were you on the ranch frequently when those crops were being grown?

A. I would say that I had been down there at intervals, rather frequent, because I believed that the situation with the Navy was showing—we thought was going to come to [1114] a conclusion.

Q. In negotiating for the lease on a percentage

(Testimony of Adolph G. Sutro.)

type arrangement, did Mr. McDaniel represent the approximate acreage he would plant?

A. No.

Q. And you didn't inquire when you were negotiating how many acres he would plant?

A. Well, he would plant anything that he could get a crop from. In other words, anything that was not overgrown or salted out by alkali.

Q. When he was reporting on the yield of the crop to you, did he make any representation as to the acreage planted?

A. No, merely the tonnage.

Q. What was the tonnage of barley?

A. That, as I said, I do not have the scale slips; only the income.

Q. Do you have any record of the tonnage of the oats? A. No, only the cash received.

Now, excuse me. I received duplicate weight slips from a public weigher, but I do not have them here, and I am not sure I can lay my hands on them.

Q. Who was that public weigher?

A. Some of them were from Boyle & Company's public scale in Vista. I do not recall if they all went over that public scale. [1115]

Q. Was that lease on a 25 per cent share basis?

A. Yes.

Q. What was the amount received by you from the proceeds of the barley crop?

A. I cannot give you that. The proceeds of both crops were lumped in together.

(Testimony of Adolph G. Sutro.)

Q. And what was that total?

A. That was \$176.85. The expense of irrigating from the sewage in the creek for the Sudan had been so great that Mr. McDaniel felt the only way he could come out would be to put in a dry farm crop, and, if I remember correctly, I think there may have been a water shortage that year, because apparently the crop was a trifle scant.

Q. What was the reason for the high expense in irrigating from Pilgrim, Mr. Sutro?

A. The same problem that confronted us from the day we bought the ranch, to put in a properly designed efficient system, with no assurance that it would not have to be removed, destroyed, sold, was not warranted by the prospects. Therefore, a Rube Goldberg contraption was rigged up in an attempt to pump the water out of the creek, and the cost of the operation was in excess of the potential income.

Q. Did you receive anything else by way of consideration from Mr. McDaniel in exchange for the leasing of the land in the year 1948? [1116]

A. Well, somewhere in here is—I don't know what year it is—I received some income from Mr. McDaniel which does not appear in my books as income.

Q. How does it appear on your books?

A. It does not appear in my books.

Q. What did it consist of? A. A check.

Q. For how much? A. \$117.

Q. And what did that represent?

(Testimony of Adolph G. Sutro.)

A. That represented, I believe, pasture land.

Q. Did you receive any part of this 1948 crop of oats and barley in kind?

A. Somewhere in here I received, I think it was the first crop, part of the Sudan crop that Mr. McDaniel stored on his place and was going to sell mine when he sold his. Then, if I recall it, he sold his—no, he used his, and sold mine or bought mine at a later date. That was the nearest I came to being the owner of a crop.

The Court: I think we will suspend now for a few minutes; five or ten minutes.

(A short recess.)

The Court: Proceed, Mr. Abbott.

Q. (By Mr. Abbott): Mr. Sutro, at the period just prior to the recess you had testified to receiving a part of [1117] the 1947 crop in kind, and storing it with Mr. McDaniel, and that it was eventually sold? A. Yes.

Q. Are the proceeds of the sale of that part of the crop that you received in kind included in the \$2680 figure you have testified to?

A. I cannot say, because I forget when it was sold. It is, however, entered in the books as income.

Q. At what point? I will give you your original records, if that will help.

A. It probably won't, but I will attempt to do my best.

(The books were handed to the witness.)

The Witness: I cannot identify which particu-

(Testimony of Adolph G. Sutro.)

lar item it was. These are my income receipts, and it shows how many tons or pounds of hay it was for, but which particular ton of hay was the one which Mr. McDaniel had on his ranch does not show on the books.

Q. (By Mr. Abbott): Well, the question we are concerned with at the present time is whether the proceeds of the sale of that part of the crop received in kind are included in the figure of \$2686.60 which appeared on your books, and which you have previously testified to.

A. Well, I am unable to answer that question. It appears on the books. Where, I do not [1118] know.

Q. Did you prepare and file an income tax return for that year?

A. Do I prepare an income tax return? Or do I file an income tax return?

The Court: He said, "Did you."

The Witness: Did I prepare—I can't balance a checkbook. Mr. Abbott. I did not prepare my return myself.

Q. (By Mr. Abbott): Then you have an accountant or a bookkeeper who keeps these records for you, Mr. Sutro?

A. Yes, Mr. Abbott.

Q. What is his name?

A. My auditor's name was Nedbal.

Q. Does he have possession of records which will tell us whether or not the part of the crop you received in kind is included in this figure you have testified to?

(Testimony of Adolph G. Sutro.)

A. You mean, would he have records and be able to identify which bale of hay was included in which particular dollar that was received?

Q. That wasn't the question, Mr. Sutro.

A. Well, I am trying to reduce it——

Mr. Abbott: The reporter will read it back, and then if it is not clear, I will attempt to clarify it.

(Question read.)

A. No.

Q. (By Mr. Abbott): This particular ledger which you [1119] have before you, and which has been referred to as an original record, is that something that you maintained, Mr. Sutro?

A. I post a ledger?

Q. Yes.

A. I can't find an account in a ledger.

The Court: I didn't hear that answer.

The Witness: I said I couldn't find an account in a ledger.

Q. (By Mr. Abbott): You recall being served, through your counsel, with requests for admissions in this case, and with interrogatories, Mr. Sutro?

A. Yes, Mr. Abbott.

Q. And some of those interrogatories required of you a statement of the rental income of the property during the years in question?

A. Yes, Mr. Abbott.

Q. And you signed and swore to the accuracy of the answers to those interrogatories, did you not? A. I did.

(Testimony of Adolph G. Sutro.)

Q. And what information did you use in completing the interrogatories?

A. The statement that the auditor got up.

Q. What percentage of your total share of the crop did you receive in kind for the year 1947?

A. Well, one year, and I don't know which one it was, [1120] my entire percentage was taken over to Mr. McDaniel's other ranch, and when it was sold, I got the income.

Q. You mean that in 1947 your entire share was delivered to you in kind and stored on Mr. McDaniel's ranch?

A. I said I wasn't sure of the year.

Q. Now, focusing on 1947, was only a part of your share received in kind?

A. That I can't answer.

Mr. Abbott: Your Honor, I apologize to the court for the time that this examination takes.

The Court: That is all right. We will do the best we can.

Q. (By Mr. Abbott): Can you recall which year it was that you received your entire share in kind, Mr. Sutro?

A. Well, my only recollection—I am sorry, Mr. Abbott. I assure you I am not trying to evade the question. You merely have picked on this subject on which my knowledge is absolutely nil. It would be to the effect that it was probably the first year the Sudan was grown because—well, may I reverse that? I think the Sudan was only grown the first year, and my recollection is that the crop that

(Testimony of Adolph G. Sutro.)

was moved over to the—that my share which was hauled over to the McDaniel ranch consisted of Sudan, so that is what I base it on in saying that it was probably the 1947 crop.

Q. You received that wholly in kind rather than part [1121] in kind and in cash?

A. I have told you what occurred. Whether that should be interpreted as being in kind, or that Mr. McDaniel held it as bailee pending sale, or what the interpretation is, I don't know. The crop was hauled there. When it was sold, I got the money. When I got the money, it was deposited in the bank. That is the sum total of my knowledge.

Q. Perhaps we are using a term you don't understand. What is your definition of the farmer's expression "receipt in kind" of a crop share?

A. Giving you physical possession of so much of the crop.

Q. Calling your attention now once again to the year 1948, you testified to receiving \$176.85 from oats and barley in that year.

A. I was under the impression I testified to it as being in '49. At least, my record here shows it as being received in 1949.

Q. It was with reference to crops grown during the year 1948, was it not? A. Probably.

Q. Now, were any cattle grazed upon the stubble of the oats and barley during the year 1948?

A. I believe that was covered by the check I mentioned that does not appear in the books. [1122]

(Testimony of Adolph G. Sutro.)

Q. In other words, the check from Mr. McDaniel for \$117? A. Yes.

Q. By the way, will you explain to us why it was exorbitantly costly to take water from Pilgrim Creek during the year 1948, thus making necessary dry farming in that time?

A. Well, I will attempt to give you some of the difficulties, to the best of my recollection. The attempt was made to build a dam in Pilgrim Creek and impound a certain amount of water, so that it could be pumped onto the fields. First off, to build a dam on sandy soil is not too satisfactory, because even though an attempt was made to dam it up, why, the water came to the surface just a few hundred feet beyond the dam; in other words, the subsurface flow was so great or subsurface leakage was so great. The pump pumped at a comparatively slow rate, somewhat in line with my testimony in regard to using large heads, and the length of time that the irrigator had to remain on duty to get over the fields with that small amount of water.

Q. Was the volume of water small because the pump capacity was small?

A. Well, that would be one of the reasons, yes.

Q. Was there any other reason?

A. I said that due to the porous character of the [1123] stream bed, it is very difficult to impound water, and, once more, in view of the imminence of the Navy's dredging, there was no reason that other efforts should be made to make the dam more watertight.

(Testimony of Adolph G. Sutro.)

Q. Was there more water in the bed of Pilgrim at that time than there was during the period when Mr. Ikemi was farming the land? A. Yes.

Q. Did you receive——

A. Mr. Ikemi, if I recall, had had a well constructed. Mr. McDaniel attempted to pump from the flow. I had nothing to do with Mr. Ikemi's methods, or with Mr. McDaniel's methods.

Q. Well, it was Mr. McDaniel who farmed the land in 1947, producing a return to you of \$2686, wasn't it? A. Yes.

Q. Did you receive anything else of value for the leasing of the land in 1948?

A. Did I receive anything else in '49, you mean?

Q. No, the question is: Did you receive anything else of value for the leasing of the land in 1948?

A. Not that I know of.

Q. Were any improvements erected on the property by the tenant?

A. Yes. Yes, he put a fence, steel fenceposts and [1124] wire, barbed wire, around the orchard to keep out the cattle when he later on grazed the property.

Q. Is that fence still there? A. Yes.

Q. How many feet of fence?

A. I don't recall. However, Mr. Abbott, in order not to take up the time of the court, I paid Mr. McDaniel for the fence, so it would not appear as a source of income, if that is what you are driving at.

Q. How many head of cattle did he run on the property?

(Testimony of Adolph G. Sutro.)

A. I believe I testified that, to the best of my knowledge, it was somewhere around 200 maximum.

Q. That was your answer as to the year 1947. Was it the same in 1948?

A. I am unable at this late date to remember. After all, I was only down there occasionally, when it looked as if some of this Navy stuff was going to come to a head. Otherwise, I was not around the country or the ranch.

Q. Did he pay on a per head basis?

A. Yes.

Q. How much per head?

A. Well, maybe I can find it in here. I think it was \$3, but I don't know.

(Examining book) It just says, "Rental of pasture, \$366.25." [1125]

Q. You have no independent recollection of the per head basis for the rental?

A. No, the only per head basis of the rental that appears anywhere in the pasture rent is under December, 1952, in which it says, "128 calves pasture for one month at \$2, 25 per cent, \$64." That is the only record in regard to the number of head.

Q. Was the property under lease in the calendar year 1949?

A. Well, I will see what happened here.

Q. Well, don't you have any independent recollection, Mr. Sutro?

A. No, I do not have any independent recollection of each year, as to what went on. It is a long way off, and we have been spending a lot of time trying to get this matter straightened out.

(Testimony of Adolph G. Sutro.)

Q. Very well. What do your records show with respect to that question?

A. It shows miscellaneous income of \$84.

Q. Is that income from the leasing of the ranch?

A. I don't know what it is from. Oh, that was government bounty for complying with the Soil Conservation program.

Q. Well, did you have any rental income for the leasing of that property in 1949?

A. No, none that I see. No, I didn't have [1126] any.

Q. Was the land under cultivation in the year 1949?

A. Judging by the income received, the answer is no.

Q. Have you in any of the years 1947, 1948 or 1949 had crops of any kind planted on the mesa or high land on the ranch?

A. Yes, I have a distinct recollection of paying out money to put a cover crop there to protect the land against erosion.

Q. Was any commercial crop planted there during those years?

A. Are you referring to the time the cover crop was put on the land to protect it?

Q. During the years 1947, 1948 and 1949, was any commercial crop put on the high land?

A. Yes, a hay crop was put on there, and as I was not around there to protect the land, I stopped that practice, because the income from the hay crop, even if good, would not have justified the potential damage to the land.

(Testimony of Adolph G. Sutro.)

Q. Who put the hay crop there?

A. Well, either Rex McDaniel or the Whelan Dairy, I don't know which one.

Q. And in which of the three years did that occur?

A. That I cannot answer, Mr. Abbott.

Q. Did you receive anything of value for the growing of that crop, or did you receive any of the proceeds of the [1127] crop?

A. If there were any proceeds, I received my pro rata. Now, first off, remember the cover crop was not planted with any idea of proceeds. That was a salvage method to attempt to protect the land.

Q. Well, isn't it a fact, Mr. Sutro, during each of those years Mr. McDaniel had dry farming crops on the mesa?

A. It is definitely not a — well, now, wait a minute. Until I know what year I stopped all farming on the mesa, I can't answer that question. I will say this, that I didn't think the income from the mesa warranted the damage to the land, and I stopped farming it.

Q. But there was some income from dry farming crops on the mesa?

A. I don't know. If I did, I wouldn't be hesitant to answer you in a moment. I have nothing to conceal, Mr. Abbott. It is just merely that I do not have an independent recollection of each bale of hay which was produced.

Q. How long did you operate Sutro Baths?

A. Since 1934.

(Testimony of Adolph G. Sutro.)

Q. And in connection with that business, did you keep books and records of all income received?

A. The auditors did. The auditor and the book-keeper did.

Q. At your direction? [1128]

A. At my direction.

Q. But you have no record which will show whether or not you received any income from dry crops on the mesa land during the years 1947, 1948 and 1949?

A. I can show you the records of what I received in those years, but whether it came from dry crops on the mesa land or dry crops from some other field, I am unable to answer.

Q. Well, the Sudan grass was only grown on the bottom land, wasn't it? A. Yes.

Q. And so your figure of gross proceeds from the Sudan grass would not include any income from the mesa, would it?

A. Well, it might. In fact, I think it probably did. It says, "Hay." That is what the entry is.

Q. In the year 1949 was there any alfalfa on the land, Mr. Sutro?

A. Apparently not. At least, I don't see any money from it.

Q. Was there any alfalfa on the land in the year 1950?

A. Apparently yes, because I received \$1039.66.

Q. When was that alfalfa planted?

A. That I can't tell you.

Q. Who planted it?

(Testimony of Adolph G. Sutro.)

A. That was planted by the Whelans, the Whelan Dairy. [1129]

Q. When did your leasing to the Whelan Dairy commence?

A. That was after Mr. McDaniel. We talked it over, and he said it was so terrifically expensive to farm the ranch, due to the fact that he had to haul his equipment back and forth, and as far as he was concerned, if Miss Whelan wanted it, she being the—having the adjacent ranch with just a gate between, it would be all right with him. In other words, if it wasn't for the fence, the Whelan ranch and ours would be the same thing.

Mr. Abbott: Will you read the pending question, Madam Reporter?

(Question read.)

The Witness: At the end of my leasing period to Mr. McDaniel.

Q. (By Mr. Abbott): Well, you have told us about two leases to Mr. McDaniel, one for the year 1947, and one for the year 1948. A. Yes.

Q. Is it then your testimony that you began leasing the property to the Whelans in the year 1949?

A. Provided I had not leased it to Mr. McDaniel in that year, yes.

Q. Was the property under lease to anyone in the year 1949?

A. I do not have any independent recollection of that. [1130] Mr. Abbott, I assure you that I

(Testimony of Adolph G. Sutro.)

am attempting to answer these questions in good faith. If you will only realize the conditions which existed, it was daily expected that the Navy would act on one of these plans. Nothing was permanent. No proper way of farming was possible, and, frankly, no detailed records such as I would normally keep in operating a business were kept on the various sources of the income.

Q. We have all been impressed with your detailed recollection of certain other transactions relative to this matter. Don't you have an equally good recollection of your leasing transactions, your conversations with the lessors, and the crops you grew?

A. Mr. Abbott, I can assure you that there is no subject in the wide world about which I am less familiar than the subject of accounting.

Q. How about the subject of crops and acreage?

A. I am not able, as I mentioned before, to estimate acreage on a field irregular in shape, partially covered with alkali and partially covered with trees and undergrowth.

Q. Very well. Sometime, and as yet unidentified, you leased the property to Miss Whelan for the growing of alfalfa. How long was the alfalfa on the land?

A. Until we had to let the crop die because our letter of March 31st was not replied to—March 31, '50.

Q. How long—how many years and how many months was [1131] the crop of alfalfa on the ground?

(Testimony of Adolph G. Sutro.)

A. It was on the ground from the time it was planted until sometime after—I believe the date of my letter was March 31, 1951, but I am not sure.

Q. Was that three years?

A. I don't remember.

Q. Well, was it more or less than three years?

A. I am still unable to give you an intelligent answer to that question.

Q. Was it more or less than five years?

A. It was less than five years, yes.

Q. Was it less than three years?

A. I said I was unable to answer that question intelligently.

Q. Was this land leased for alfalfa purposes on a share basis?

A. It was leased on a share basis.

Q. How many cuttings were made?

A. Oh. Well, I got \$1039.66 on November 15, 1951, and I got \$252.25 in December, 1930.

Mr. Cranston: December, 1930?

The Witness: December 30, 1952. Please excuse me.

Q. (By Mr. Abbott): What was the latter figure in dollars? A. \$252.25. [1132]

Q. All right. Now, how many cuttings of alfalfa resulted in that income?

A. I know that the crop was an excellent crop. I remember that Mr. Vail and Mr. Rorapora of the Vail Company came over and commented on it. Great expectations were had for the field, but I cannot tell you how often it was cut.

(Testimony of Adolph G. Sutro.)

Q. How many acres were planted to alfalfa?

A. I will have to give you the same answer as before, that part of the bottom land that was not covered by alkali, trees or undergrowth.

Q. Was it more than 10 acres? A. Yes.

Q. And was it less than 90? A. Yes.

Q. Was it more than 50?

A. I am unable to state.

Q. Was it more than 30?

A. I would think so.

Q. Was it more than 40?

A. You are cutting it much too fine for my ability to estimate the area of the field.

Q. Now, this crop was on a share basis, and you were interested in it as a proprietor. Did you discuss the acreage to be planted with Miss Whelan?

A. The acreage to be planted was the available acreage. [1133]

Q. Did she make any representations to you as to how much she would plant? A. No.

Q. Did she in reporting—

A. Now, wait a minute. Let me clarify that. I said, I believe, that the acreage to be planted was the available acreage.

Q. Did she make any representation as to the number of acres which would be planted?

A. No, not that I recall.

Q. Did she in reporting on the yield of the crop tell you how many acres had been planted?

A. No, she gave me the baler's weight tags.

Q. Did she tell you how many bales or pounds had been produced per acre?

(Testimony of Adolph G. Sutro.)

A. Except that the crop was phenomenal in its weight, I do not know.

Q. Well, did she give you any report on the yield per acre?

A. How many tons per acre?

Q. Or any other measure?

A. It was considerably above the average, but what it [1134] was, I do not recall.

Q. Did she give you a report, Mr. Sutro?

A. To the best of my knowledge, she mentioned her estimate of the tonnage per acre.

Q. And what was that estimate?

A. I do not remember.

Q. Was she irrigating the alfalfa?

A. Yes.

Q. During the entire period?

A. Until such time as the Navy shut off the sewage, and then the crop was allowed to die, and pastured off by cattle. We wanted to put in a pump and save the crop, but were unable to get a reply to our letter, which would warrant me in spending that money.

Q. Well, you had a well on the property at the time that the effluent ceased, did you not, in the bottom land?

A. Yes.

Q. Was there anything to stop you from harnessing the well, and putting a pump there, and using that water?

A. I believe the matter was gone into in detail in the letter which is in evidence in this case.

Q. Do you have any answer to that question

(Testimony of Adolph G. Sutro.)

other than the letter to which you have previously alluded?

A. Well, I would only be repeating the statements which are contained in the letter. [1135]

Q. Very briefly, there really was no reason why the well could not be pumped at that time, was there, Mr. Sutro?

A. Very briefly, Mr. Abbott, if there were no reasons, we would have pumped it.

Q. Then why didn't you pump it?

A. You want me to repeat the reasons given in the letter?

Q. If those are the answers to the question, yes.

A. We did not know what the Navy plans were. We did not know where the creek was going to run under any future changes that they might have. After all, the channel of Pilgrim Creek was not at one time the accepted discharge for the effluent plants, the sewage plants.

The value of the alfalfa crop was such—my share was such that I did not think I would be warranted in putting in a temporary pump, or a pump which I was not sure could be permanent; that I would have to obligate myself either to an electric power contract for three years to get the extensions, or I would have to rent a gasoline pump for which I would have no further use. In other words, there were so many intangibles that I could not see as a prudent man where I was warranted in making an investment from which I might not be allowed to receive a satisfactory income.

(Testimony of Adolph G. Sutro.)

Q. And those were the reasons why you did not pump water from the well to save the alfalfa crop; is that correct? [1136]

A. In addition, Mr. Abbott, we requested a reply—Mr. Cranston, I believe, sent the letter to your office—in more or less time in which, by bending every effort, we might be able to save the crop. The time went along, went by, waiting for an answer to that letter.

Q. You mean the letter in which you asked Mr. Deutz if the pollution would continue; is that correct? A. That is the letter.

Q. And that is the letter, an answer to which was required before you could put a pump in the well to irrigate the alfalfa?

A. That is the letter to which an answer would have aided in determining whether it was economically desirable to put the pump in. There was no mechanical reason, if the pump was readily available, that it could not have been put in the well. The question was, would it pay?

Q. Didn't you contemplate putting a pump in that well, regardless of the use of the property?

A. Certainly. We eventually figured on putting in a pump, after we knew the final decision of the Navy.

Q. Did you have cattle grazing on the land subsequent to 1949? A. Yes; yes, definitely.

Q. Whose cattle were they?

A. They were either Whelan Dairy cattle, or the cattle [1137] of Rex McDaniel.

(Testimony of Adolph G. Sutro.)

Q. How many in the year 1950?

A. I have no recollection.

Q. Do your records show?

A. Pasture? What year, Mr. Abbott?

Q. 1950.

A. It doesn't show any rental of pasture in 1950. Wait a minute.

Q. Were there cattle, in fact, on the land in the year 1950?

A. Well, if there were cattle in the year 1950, I would have received a check for it.

Q. How many cattle?

A. I said I had no recollection of the number of cattle.

Q. Have you made demand for the rental for pasture used in that year?

A. I don't know if there were any cattle that year. I said, if there had been cattle, I would have been paid for it.

Q. Were there cattle on the land in the year 1951?

A. Well, I show pasture rent in the year 1952, so judging by the speed with which bills are paid there, I presume it covers the 1951 bill, Mr. Abbott.

Q. How much was that? [1138]

A. \$52. Wait a minute. Excuse me, please, \$64.

Q. When was it that the alfalfa crop died for lack of water, Mr. Sutro?

A. Shortly after the pumping over ceased.

Q. Which was in July, of 1952? A. Yes.

Q. Did you receive anything else of value for

(Testimony of Adolph G. Sutro.)

the leasing of the land during the years 1950, 1951 and 1952?

A. Well, in case you don't have the figures—you are saying '50, '51 and '52?

Q. That is correct.

A. My records show miscellaneous in 1950 of \$84; rental of pasture, \$1039.66 in 1951; and rental of pasture, \$252.25—excuse me—no, that is hay \$252.25, and rental of pasture \$64.

Q. The question is not what your records show. The question is, did you receive anything else of value for the rental of the land during those three years?

A. No, the only thing I ever received of any value was that \$117 check, and I have not been able to place the exact year that that came in.

Q. Did it appear to be a good stand of alfalfa that Miss Whelan had on the property?

A. Yes. I believe a few moments ago I testified that experts had said it was an outstandingly good stand. [1139]

Q. Was there anything grown on the mesa land during the years '50, '51 and '52?

A. Maybe I can work that back. Will you excuse me just a moment? I might be able to give you an estimate there.

No, I can't tell you. Somewhere along in there this cover crop was put on, and I refused to allow the mesa to be farmed any more. My damage, as I said, was far more than the value of any crop.

(Testimony of Adolph G. Sutro.)

Q. How many years was there any crop on the mesa?

A. That crop was on the mesa until this year.

Q. Then when was it first put on the mesa?

A. That is what I am trying to find out, and I can't tell you, but the crop was on the mesa until just a few weeks ago.

Q. Can you state whether or not the proceeds of that crop appear in the figures you have previously testified to?

A. Mr. Abbott, I told you this was a cover crop, and I insisted that it stay there in order to protect the mesa. The land, that type of land, is very subject to erosion, unless properly protected, and I have had very severe losses for which we are making no claim.

Q. Confining the question to commercial crops grown on the mesa——

A. Yes. [1140]

Q. ——are you able to say whether or not the proceeds of any commercial crop grown on the mesa appear in the figures you have previously testified to?

A. Yes.

Q. Mr. Sutro, are you generally familiar with the structures and installations on ranches in the area in which yours is located?

A. Only casually, Mr. Abbott.

Q. But you have been on a number of those ranches in connection with your investigation of market values and rental values, have you not?

A. Mainly at night. If I recall the times on my report, after or around dusk.

(Testimony of Adolph G. Sutro.)

Q. What is the total square footage in the equipment shop which you planned?

Mr. Cranston: If the court please, I have no objection to cross-examination, but the record speaks for the total square feet.

The Court: That is true. Of course, it can be figured, but it is cross-examination. But I hope we don't take up too much time on matters that are arithmetical, at least.

Mr. Abbott: No, that wasn't my intention at all, your Honor, and I am not testing the witness' knowledge of the square footage, or anything of that type. If counsel has the figure, I will accept it from him. [1141]

The Witness: My recollection is 2600 on the ground floor, and 1600 on the mezzanine.

Q. (By Mr. Abbott): And in the implement shop?

A. I think that was 21 by 46. Not too far from 1000 feet.

Q. And in the storage shop, or the storage shed, I believe it is called?

A. I believe that was 40 by 60, if I am correct.

Q. 2400 square feet?

A. Well, I am not sure of that floor space there, but it is not too far off.

Q. Quick arithmetic indicates a total of 7100 square feet devoted to those three structures. Can you name another ranch in the San Luis Rey Valley which has that square footage in structures devoted to the purposes indicated?

(Testimony of Adolph G. Sutro.)

A. I believe I mentioned, when you first asked me that question, Mr. Abbott, that I only had a slight familiarity with the structures on other ranches in the valley.

Q. How many other ranches have you been on?

A. I have been on a great many of them.

Q. Never in the daytime?

A. Yes, frequently in the daytime.

Q. Well, can you name a single one of those ranches you visited which has 7100 square feet of area devoted to the three purposes [1142] indicated?

A. Mr. Abbott, I can not either say that is the case, or say that is not the case. After all, you know ranches don't have to have all their buildings sandwiched up one after the other like a file of soldiers.

Q. In other words, your answer is, you don't know? A. My answer is, I don't know.

Q. Can you name any other ranch in San Diego County which has a crane, Mr. Sutro?

A. There are several over at Camp Pendleton, and they do some very large farming operations, Mr. Abbott.

Q. Owned by the United States, you mean?

A. Cranes, yes.

Q. Are they used in the agricultural pursuits on Camp Pendleton?

A. I have seen them used for clearing channels on Camp Pendleton and adjacent property.

(Testimony of Adolph G. Sutro.)

Mr. Abbott: May I have that exhibit with the list of shop tools, please?

(The document was handed to counsel.)

Q. (By Mr. Abbott): Now, to save time, Mr. Sutro, I am going to read a list of tools, and I will read it slowly, and ask you to interrupt me when I come to a tool which you know is owned by one of the other ranchers in the San Luis Rey Valley or the Pilgrim Creek area.

A. Just a moment, until I orient myself with some of [1143] the shops with which I am acquainted. Do you mean in the general vicinity, or are you limiting yourself to the San Luis Rey Valley?

Q. The San Luis Rey Valley and the Pilgrim Creek area, Mr. Sutro. As a matter of fact, I will simplify this, and present you the shop plan, which is Plaintiff's Exhibit 44-D, which has marked on it a number of pieces of equipment, oh, roughly 20, and ask you if you will tell me which pieces of equipment you see there that can be found on other ranches in the San Luis Rey Valley or the Pilgrim Creek area.

Mr. Cranston: If the court please, I will object to this line of cross-examination as immaterial. Mr. Sutro intended to have this equipment in 1946, and whether anybody else has it or not is immaterial. He intended to use it for his own purposes, and I don't think that the United States, as a tortfeasor, can say because everybody else does not

(Testimony of Adolph G. Sutro.)

use that same equipment that he is not damaged when he is prevented from using it.

It seems to me that if the building was to be erected and that equipment placed in it, and he is prevented from buying it or using it, he is damaged, even if he is the only person in the world who wants to use that particular equipment; that it does not depend upon how many other people in that vicinity use the same equipment.

The Court: That may be true, but still this is proper [1144] cross-examination, giving to the court at least a suppositious measure to evaluate evidence that consists to a great extent in a conception, a mental conception. That is what I was trying to illustrate earlier: the difficulty of evaluating legal evidence when the greatest factor in the production of it is a mental concept that hasn't developed or reached the point of an embryonic representation on paper, or something of that kind. I don't know if that is the purpose of the interrogation or not——

Mr. Abbott: It is one of the purposes, your Honor.

The Court: ——but I think it is proper cross-examination.

The Witness: Would you repeat the question?

(Question read.)

The Witness: Well, starting in the upper left-hand corner, I see a compressor. I have seen compressors on other ranches. I cannot tell you which one, but a compressor is not a particularly rare piece of farm machinery.

(Testimony of Adolph G. Sutro.)

I also see a sink. I believe most homes have sinks in the San Luis Rey Valley.

I see a bench for plumbing and painting. I have seen pipe vices and paint brushes on other ranches. I see a hacksaw. I have seen a power hacksaw on other ranches. I have seen a drill press.

Q. (By Mr. Abbott): Would you mind identifying the [1145] ranches on which you have seen them?

A. I have seen a drill press on the McDaniel ranch. I even believe I have seen a drop hammer on the McDaniel ranch. I have certainly seen grinders on almost every ranch.

Q. How about arc welding equipment, Mr. Sutro? Have you seen any of that?

A. Yes, that is very prevalent.

Q. Where have you seen it?

A. Oh, just offhand, McDaniel has one.

Q. How many acres does McDaniel farm?

A. He has about 600, I believe. Most of the ranches—now, are you asking me what I know exists, or what I am reliably informed?

For instance, I know a ranch that employs a full-time welder, but I haven't seen their equipment. But I know he does not have a full-time welder unless he has arc welding equipment. I do know that on the Asasuchi ranch they have a full-time welder, and he has arc welding equipment. In fact, they have an arc welding truck.

Q. Do you know another ranch in the San Luis Rey Valley or in the Pilgrim Creek area which

(Testimony of Adolph G. Sutro.)

has 10 or more pieces of power shop equipment?

A. Not offhand, no.

Q. How many pieces does your plan call for, Mr. Sutro? A. I never counted them. [1146]

Q. It is in excess of 10, is it not?

A. Are you referring to the pieces that I now have on hand, or the pieces on which we are claiming a loss, Mr. Abbott?

Q. Well, have you purchased all of these pieces of equipment that are described in the chart you are now viewing, and in Plaintiff's Exhibit 44-G?

A. No, that wasn't what I was trying to find out. I own certain pieces of equipment, such as a traveling crane, for which there has been no claim made on the Government.

Q. You are claiming the cost of the installation of the crane, are you not?

A. I am claiming the damages in the cost of the installation.

Q. Precisely.

A. I know of no more useful tool around a ranch than a crane, but whether that—excuse me.

Q. Now, Mr. Sutro, will you explain to the court what circumstance attributable to the conduct of the Government, which is the subject of this action, prevented you from erecting this shop and installing this equipment in 1946?

A. Why, certainly. This is rather valuable equipment. There should be someone living on the ranch. No one was able to live on the ranch to protect the equipment.

(Testimony of Adolph G. Sutro.)

Q. Did you secure the price of insurance on the equipment, [1147] to protect against loss of that type?

A. No, Mr. Abbott. I am not looking to have losses that I have to collect on from insurance. I did not see any reason to put up an unattended shop, with this valuable equipment in it and the supplies, none of which the Government is being asked to do anything about, and leave it unattended, an invitation, as it were, to a breaking and entering, just in the hope that I would be able to collect on an insurance policy.

Q. Would the cost of the insurance to protect the entire shop and all the equipment in it be more or less than the item of damage you are claiming with respect to the shop and its equipment?

A. The cost of insurance would be less. However, if the shop could not be used, there was no reason for building it.

Q. Is there any reason why the shop could not be used, Mr. Sutro?

A. Yes. Nobody could live on the ranch.

Q. You weren't drinking bottled water in 1946, as you are now, I take it?

A. I don't understand your question.

Q. Was bottled water available, Mr. Sutro, in 1946?

A. Well, I never heard of having to do my bathing with bottled water, or cooking with bottled water, or having to [1148] watch my step every moment so that I would not come near tap water.

(Testimony of Adolph G. Sutro.)

So while bottled water was available, I did not care to live where only bottled water was available.

Q. In connection with your operation of Sutro Baths, did you acquire a knowledge with respect to filtration and water treatment plants?

A. Oh, yes. In fact we offered, at our own expense, to put in a purification plant for the Navy sewage, in order to protect the matter, but we were unable to get an answer.

Q. Did you intend to put in a plant for your own domestic source of water?

A. No. As a matter of fact, I am allergic to drinking sewage, whether it has been purified or not.

Q. Do you ever drink the water that flows through the Los Angeles city water system, Mr. Sutro?

A. Not if I can help it.

Q. Well, would you have considered the water suitable for domestic purposes if purification had occurred up at the plants, as you offered to effect on behalf of the Navy?

A. If purification had occurred up at the plants, it might have been possible that by pumping the well slowly enough to allow for natural flow from the surrounding area, to infiltrate in the well, to have used the water for domestic purposes.

Q. Would that have been sewage water, when so used? [1149]

A. No, not by barely drawing the well down. I do not think the hydraulic gradient would have been sufficient to bring sewage into the well.

(Testimony of Adolph G. Sutro.)

Q. Mr. Sutro, do you still plan to build the home that you have described in your testimony?

A. Yes, Mr. Abbott.

Q. Well, have you ever varied from that intention during the period from 1946 to the present time?

A. Yes, Mr. Abbott.

Q. And when was that?

A. That was when I was so hard up, from having spent so much money in an effort to mitigate damages, that I thought I would have to cut down on my building plans. As you know, I have spent tens of thousands of dollars attempting to get this matter settled, and it seemed to me like I would have to cut down the size of the home.

Q. At what point of time was it that you temporarily abandoned your plans with respect to the home?

A. I believe it was mentioned in that letter that Mr. Deutz received, that I had been bled white, I had had to neglect my business for years on a matter which two business men could have settled in three minutes, that I did not have time to devote myself to keeping up my income, and I wrote and said it was doubtful if I could afford to build that home. [1150]

Q. Is that a letter which was written on April 2, 1951?

A. I think it was written in March.

The Court: In March?

Mr. Cranston: I believe you are referring to my letter, transmitting Mr. Sutro's letter.

Mr. Abbott: Yes, I am.

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Abbott): Anyway, that was in March, 1951, Mr. Sutro?

A. I believe that was the date.

Q. What was your net worth at that time?

A. Insufficient, in my opinion, to afford that house.

Q. What was it in dollars?

Mr. Cranston: If the court please, I object to that as immaterial.

Mr. Abbott: I would like to show the materiality, your Honor. We would like to show that the witness made a written admission of abandonment of intention, and he is anticipating the question and is explaining his motives as being financial. I think under those circumstances the question is material.

The Court: Overruled.

The Witness: I would be unable to state my exact worth, Mr. Abbott, but I know I did not have the spare cash to build that home.

Q. (By Mr. Abbott): Did you have a net worth in excess [1151] of \$100,000 at that time?

A. Yes.

Q. Well, was it in excess of \$500,000?

A. No.

Q. Was it in excess of \$200,000?

A. It might have been. There is a distinction, Mr. Abbott, between net worth and cash income.

Q. I have become acutely aware of that at times.

A. I have for years.

Q. What was the area of this home, roughly? It was about 3750 square feet, was it not?

(Testimony of Adolph G. Sutro.)

A. I think you are a trifle high, but not much.

Q. About 3700, roughly?

A. Well, all right. I thought it was 3600, but that is close enough.

Q. And it was planned to that size to accommodate both yourself and your mother; is that correct?

A. Yes.

Q. Do you have any family at the present time, Mr. Sutro?

A. No.

The Court: Mr. Abbott, let me inquire, without indicating that I am trying to rush you, do you think you can finish the cross-examination in a few minutes?

Mr. Abbott: I think it will take a little longer than [1152] that, your Honor. The direct was rather long, and I have a number of notes to cover.

The Court: If we cannot finish tonight, there is no use keeping everyone here much longer, on account of these traffic conditions. I think we will recess now until 10:00 o'clock, but I think you had better have your witness here in the morning, Mr. Cranston.

Mr. Cranston: Yes.

The Court: So that we can proceed with the case a little more speedily tomorrow. Probably overnight you can get your questions in mind so as to try to elicit the answers a little more expeditiously than we have today.

Mr. Abbott: Yes, sir.

The Court: You have covered pretty nearly all

(Testimony of Adolph G. Sutro.)

of the phases, I should think, that should be explored on cross-examination.

Mr. Abbott: I will review my notes, your Honor, and attempt to be as concise as possible.

The Court: Very well. 10:00 o'clock tomorrow morning.

(Whereupon, at 4:35 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Thursday, March 4, 1954.) [1153]

March 4, 1954, 10:00 A.M.

The Court: Proceed, gentlemen.

ADOLPH G. SUTRO

the plaintiff herein, having been heretofore duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued)

By Mr. Abbott:

Q. Mr. Sutro, returning to the crops grown by Miss Whelan on your property, did you receive any of the proceeds of those crops in kind?

A. No, Mr. Abbott, I did not.

Q. All of the rent and all of the consideration you received from Miss Whelan was in cash?

A. Well, I think she did some work, which was taken into consideration in the settlement.

Q. And your share was reduced by the value of that work?

A. Yes, that would be the case.

(Testimony of Adolph G. Sutro.)

Q. What was that work?

A. It was that leveling, which was discussed; that floating of the land.

Q. Yes. Now, you testified, Mr. Sutro, that the construction of the residence building was commenced in 1936. Who was the general contractor on that job? [1155]

A. There was no general contractor on the job, Mr. Abbott.

Q. Were you acting as an owner-contractor?

A. That was my intention at that time.

Q. Did you have a foundation subcontractor?

A. No, we would put in our own foundations.

Q. Did you employ labor for that purpose?

A. We had graded out and excavated for the foundations. We had not started to pour them.

Q. Did you have an excavation subcontractor?

A. Yes.

Q. Who was he? A. M. A. Willard.

Q. Are those excavations still on the property, Mr. Sutro?

A. Yes, Mr. Abbott, they are still there.

Q. Have you, since 1946 up to the present time, resumed work on the residence?

A. No, Mr. Abbott.

Q. Have you commenced work on any of the other structures, with the exception of the shop building? A. Yes.

Q. What structures?

A. I commenced work on the residence and the implement shed. [1156]

(Testimony of Adolph G. Sutro.)

Q. By commencing work on the residence, you mean the work——

A. I meant the help house. Excuse me.

Q. Do you mean by work on the help house, an extension on the existing caretaker's house?

A. No. The help—the location delineated on the plot plan.

Q. Is the implement shed a building different from the shop building? A. Yes.

Q. What is the approximate state of construction at the present time of the implement shed?

A. We started to work on it, and right after the hearing of September 20th Mr. Cranston wanted me to close down everything in order to have sufficient time to prepare for the case. We thought it was going to be held—I believe the hearing was to be held December 7th, and I thought as long as the shop was fairly well along, that we would stop construction on the help house and the implement shed.

Q. Well, how far had construction proceeded as of September 29? A. On what?

Q. On the help house.

A. On the help house. We had about half completed the excavations on the site for the foundations. [1157]

Q. What type of foundations were those?

A. Those were pier foundations. I believe the drawing shows it, but my—the drawing would be the answer. I forget whether they were continuous, or pier. My recollection is a little hazy on that point.

(Testimony of Adolph G. Sutro.)

Q. That is an excavation of what—about 18 inches, Mr. Sutro?

A. No, this was a side hill. I had to cut a bench on it.

Q. How far had you progressed in the construction of the implement shed on September 29, 1953?

A. We had laid it out. We had stretched the lines for the setting of the screeds. In fact, I think the screeds—some screeds may have been set for the pouring of the floor.

Q. Are those still in place?

A. The only thing in place are the ditches for the underground piping, which was to, or is to connect the two buildings, and that is still there, where the excavation or trenches were cut, except that we got caught in one of our intermittent rains, and they are not as neat as they were when they were first put in in September.

Q. So with respect to the help house and the implement shed, the only work done has been moving of earth as of September 29th, and as of the present time; is that right?

A. No, I think we started to set screeds on the implement [1158] shed.

Q. Yes, you did so testify. Do you have a general contractor employed to do that work, Mr. Sutro?

A. No.

Q. Do you have any subcontractors employed to do that work?

A. No.

Q. Have you requested bids from general or

(Testimony of Adolph G. Sutro.)

subcontractors with respect to that work?

A. No.

Q. Have you done any work with respect to the guest house? A. No.

Q. Have you done any work with respect to the storage shed?

A. No. After all, putting up the three buildings at one time was about all I wanted to tackle.

Q. Now, was the tool shed which is presently in process of construction as useable for the growing of alfalfa, and black-eyed beans, and flowers, and vegetable seed as it was for the growing of truck vegetables, Mr. Sutro? A. No.

Q. What would be the difference between its uses with respect to those two classes of crops?

A. Because truck farming is probably the most highly [1159] mechanized of any type of farming that I know of, and the growing of alfalfa usually does not require the investment in equipment, nor the maintenance of equipment.

Q. Well, then, I will ask the same question with respect to the storage shed. Is that as important to the growing of alfalfa, black-eyed beans, vegetables for seed, and flowers grown commercially as it is to the growing of truck vegetables?

A. I am not qualified to answer that question. That is getting a little bit too technical for me to hazard a reply, Mr. Abbott, even though I assure you I would be happy to do so if I were able.

Q. At any rate, you know of no reason why

(Testimony of Adolph G. Sutro.)

it isn't as suitable for one purpose as it is for the other?

A. I said I was unable to answer that question.

Q. Directing your attention to the help house.

A. Yes.

Q. Do you know of any reason why that isn't as suitable for the growing of one class of crops as it is for the growing of the other class of crops?

A. In my opinion, it would be equally suitable.

Q. Finally, calling your attention to the implement shed, is there any reason why that is not as suitable to the growing of the one class of crops as it is to the growing of the other class of [1160] crops?

A. It would be my impression that it was equally suitable.

Q. Did you maintain a residence in the city of San Francisco up until the time that you sold Sutro Baths?

A. Could you explain to me what you mean by maintaining a residence, Mr. Abbott?

Q. I don't know how to further clarify the question, Mr. Sutro. Did you have a place where you lived?

A. Then may I tell you what we did?

Q. I don't think a lengthy explanation is necessary.

A. I assure you the explanation will not be lengthy.

Q. Very well, sir.

A. We sold our home in 1948. Thereafter we

(Testimony of Adolph G. Sutro.)

moved from place to place, hoping that this matter would be settled. The original intention was to build the home here and make one move. In 41 years, Mr. Abbott, I moved once. Since this has happened, I think I have moved four or five times. I would not call the place where we lived, any of them, a home.

Q. From the time when you purchased the ranch up until the time that you sold Sutro Baths, did you continuously have some premises in the city of San Francisco where you could sleep and eat?

A. Mr. Abbott, the expression is perfect. They were premises where you could sleep and eat.

Q. Was that an apartment, Mr. Sutro? [1161]

A. No, it was an alleged bungalow.

Q. Now, during that period I have last defined, you were exercising supervision over Sutro Baths, were you not? A. I was, among other things.

Q. And that took a great deal of your time, did it not?

A. On the contrary, Mr. Abbott, I can assure you that I have spent the major part of eight years attempting to get this matter straightened out.

Q. And staying in touch with the commercial activities being conducted on your ranch, I assume, also?

A. My activity was mainly an attempt to arrive at an understanding which would enable me to proceed with my investment.

Q. Now, Mr. Sutro, have you in building the shop building, which is partially completed at the

(Testimony of Adolph G. Sutro.)

present time, put in any special foundations for the shop equipment?

A. The floors are heavier than is customary in order to permit the installation of equipment.

Q. What is the material with which those floors are constructed? A. Wood.

Q. How thick?

A. It would be a double floor, approximately—what is known as 2-inch. After they finish planing lumber these days, it is not the full size. [1162]

Q. By a double floor, you mean a subfloor, with flooring material added on top?

A. That is correct.

Q. But you have no concrete foundations or bases for any of this power equipment or heavy equipment of any type?

A. No; and, frankly, I don't know of any of it offhand that would require it, except the wood-working machinery in the, shall we say, alcove, for which a concrete floor was intended.

Q. Have you built all of the items of equipment which appear on the plan of the shop building?

A. No, I have not.

Q. Have you bought any of those items which you did not have in 1946?

A. Have I bought any tools since 1946, or tools which appear on that——

Q. Tools which appear on the shop plan.

A. May I see the plan? I could probably answer your question more intelligently.

(Testimony of Adolph G. Sutro.)

Q. The plan referred to, of course, is Plaintiff's Exhibit 44-G.

A. This is since 1946 to date that you are asking me, Mr. Abbott?

Q. Yes.

A. Yes, I have obtained a compressor and the laps. [1163]

Q. In naming these things, will you state the approximate date that you purchased them, please? Well, the year, if you will.

A. I can't even do that, Mr. Abbott. I can tell you what I had, and what I don't have, but I can't tell you when I got them. However, there are not very many, I assure you.

Q. All right. Well, give us the list then.

A. Yes.

Mr. Cranston: What was the second item you mentioned, Mr. Sutro? You named the compressor.

The Witness: And laps, l-a-p-s. The gas welding equipment—and, by the way, I can give you the date on that—that was purchased in 1953. The sander was purchased. That's all I notice.

Q. (By Mr. Abbott): Have you placed the orders for any of the other items of equipment shown on that plan? A. No, Mr. Abbott.

Q. Now, Mr. Sutro, you testified to an investigation of the leases of what you considered to be comparable property. A. Yes.

Q. In the areas surrounding your ranch, and as far away as Vista. By the way, how far away is Vista, Mr. Sutro?

(Testimony of Adolph G. Sutro.)

A. Vista proper, or the Vista district?

Q. Well, that area in Vista which you visited in connection with your inquiry. [1164]

A. I would say—I would guess between five and six miles. I would guess around six miles.

Q. Now, in connection with that inquiry, did you ascertain the types of crops being grown by the tenants whose leases you investigated?

A. May I have the notes?

Q. Certainly. This question does not call for a review of each interview; merely a general statement as to the scope of your inquiry.

A. Well, then the answer is on some occasions I did.

Q. And did you on some occasions inquire as to the acreage being planted? A. Yes.

Q. Did you ascertain the particular years with respect to which the data secured related?

A. The data secured being what, Mr. Abbott?

Q. Well, the data that you were seeking in your investigation, Mr. Sutro.

A. Why, I believe my investigation shows a tabulation by years of the rentals received.

Q. Exactly. You worked it out year by year with the people you interviewed?

A. Naturally.

Q. And in each case did you endeavor to ascertain whether the land in question was comparable to your land? [1165]

A. To what extent do you mean I should have gone? I think I see what you are asking, Mr.

(Testimony of Adolph G. Sutro.)

Abbott, but I would like to be sure that both——

Q. Were you seeking to find conditions comparable to those which existed on your ranch, Mr. Sutro?

A. Yes. I can assure you that this list was not a hand-picked list, that it consists of everyone I talked to, not the ones that were most favorable.

Q. And you made a diligent effort to find everyone who could give you information with respect to rental value of property comparable to your own, then?

A. No, I did not make a diligent effort to find everyone.

Q. To find many people who could give you information?

A. I thought I had a reasonable cross section from one of the largest renters in the vicinity to people who rented smaller amounts.

Q. Did you go to your own tenants to get that information, Mr. Sutro?

A. The Whelans mentioned about the Nichizu rent to which I testified in court.

Q. Did you ask the Whelans about the years, the crops, the acreage, the rent on your own property?

A. Your question is not clear to me. Did I ask them about rent which they had paid me? [1166]

Q. Yes.

A. I didn't think what was received for the rents on my property, in view of the conditions under which people were forced to operate was in any way comparable.

(Testimony of Adolph G. Sutro.)

Q. Well, did you ask them what crops they grew in what years on your property?

A. Why, no. You mean in the course of this investigation?

Q. Yes, sir.

A. Why, certainly not. It would never——

Q. Did you ask them what acreages were planted on your own property?

A. It would not occur to me to do it. Besides, I do not know how they could estimate it. After all, Mr. Ikemi, who was a very practical farmer, estimated, I believe, 70 some odd acres, when a survey showed it to be 97, and when he was farming the land, it was open and clear.

Q. Did anyone, to your knowledge, survey the land being farmed by Mr. Ikemi?

A. Not to my knowledge, except that Mr. Ikemi stated he farmed all the bottom land and the mesa, and the neighborhood told me that that was correct. Various people said that was the land which had been farmed, and, of course, it was self-evident from inspection.

Q. Your counsel has made an offer of proof with reference [1167] to certain items of damages excluded by the court. Did you keep a detailed record of all of the items of damages referred to in the offer of proof?

A. Yes, Mr. Abbott.

Q. And that record goes back to 1946, Mr. Sutro?

A. Yes, Mr. Abbott.

Q. And it consists of many hundreds of items, does it not?

A. Yes, Mr. Abbott.

Mr. Abbott: No further questions, your Honor.

(Testimony of Adolph G. Sutro.)

Redirect Examination

By Mr. Cranston:

Q. Mr. Sutro, you were asked certain questions yesterday concerning your receipts from crops and the tonnages received on them. At that time you stated you were unable to give any information as to the tonnages. What documents were you examining at that time?

A. I was examining a report which covered the operation of the ranch.

Q. Had you examined your ledger at that time?

A. No, I believe the government had the ledger at that time.

Q. And have you examined it since that time?

A. Yes.

Q. I will show you an account page, account No. 15, and [1168] ask if, basing your answer upon that account, you can give certain of the information that was requested yesterday. A. Certainly.

Q. Will you state what this ledger sheet shows with reference to income from hay?

A. It shows that on February 27, 1948, 30¼ tons of hay at \$35 a ton, a total of \$1,058.75, was received.

Q. And on October 1st?

A. 70,163 pounds of hay, at \$1.75 a hundred, in other words, about 35 tons at \$35, \$1,227.85.

Q. And another entry on the same day in 1948.

A. 20 tons of Sudan at \$20, \$400.

(Testimony of Adolph G. Sutro.)

Q. And are the total receipts for hay for that year shown in this account?

A. Yes, \$2,686.60.

Q. And is there an entry for 1951 on this page?

A. It says, "From Whelan Ranch, \$1,039.66."

Q. There is a notation under the column headed "Folio" of "392." Does that refer to any particular entry?

A. That refers to the entry, the original entry in the checkbook, from which this entry was made.

Q. I show you——

A. That is the check record.

Q. Can you find in here the entry to which this refers?

A. 392? Yes, November 15th is the entry. [1169]

Q. Yes. What is set forth under the entry November 15, 1951, in this check register?

A. It says, "Received from Whelan Ranch, \$1,039.66."

Q. And what is contained underneath that, in reference to the manner in which that figure is arrived at?

A. It says, "First cutting of alfalfa, 27 tons, 240 pounds, at \$20 per ton, \$542.40."

Shall I read all of this?

Q. Yes.

A. "Second cutting of alfalfa, 45 tons, 1200 pounds, at \$34.00 per ton, \$1,550. Third cutting of alfalfa, 55 tons, 1240 pounds, at \$37.50, \$2,085. Fourth cutting of alfalfa, 55 tons, 1240 pounds, at

(Testimony of Adolph G. Sutro.)

\$20, \$1,112.40." It says, "Above alfalfa damaged by rain."

The next item says, "Pasturage 161 head for 13 days at \$3.00 per month—" May I correct that? Did I say 13 or 12 days?

The Reporter: 13.

The Witness (Continuing): "——12 days, \$193" even. "10 loads green alfalfa, 3 tons per load, at \$5.00 per ton, \$150."

Q. (By Mr. Cranston): And what is the total of those items?

A. The total of those items is \$5,632.80.

Q. And what was your percentage? [1170]

A. My percentage, at 25 per cent, was \$1,408.20.

Q. And is that figure recorded in this register from which you are reading?

A. Well, it is continued down here.

Q. Yes. But is the \$1,408.20 figure recorded there?

A. Yes, surely. That is where I am getting it.

Q. Now, then, what items follow that?

A. Then I sold the Whelan ranch in 1950, 28¾ tons of hay, at \$25 a ton, \$718.75.

I sold them 11¼ tons of hay, at \$30 a ton, \$37.50.

I sold them 9½ tons of alfalfa, at \$20 a ton, \$190, which, with the balance brought forward from the former alfalfa receipts, left a total due me of \$2,354.45.

I paid as my share of the floating, \$1,080. The labor in clearing the sheet piling, that was in that effort to mitigate damages, was \$62.70. The labor in

(Testimony of Adolph G. Sutro.)

installing that same device was \$272.09, amounting to \$1,314.79, and leaving a net balance due me of \$1,039.66, which was deposited on that date.

Mr. Abbott: May I examine the record, please? I would like this marked for identification, the check register from which the witness has last read.

Mr. Cranston: If the court please, this is the check register which is Mr. Sutro's current check book, incidentally, and I hate to have it here in court. We have no objection to counsel making any copies that he may wish from it. [1171]

Mr. Abbott: Your Honor, if it becomes necessary to keep it part of the record after the close of the hearing, I am sure we can stipulate to making photostatic copies for the pertinent pages and return the original record to the plaintiff.

Mr. Cranston: He will need it even during the rest of this hearing.

The Court: That is your current check book?

The Witness: Yes, your Honor. That is my check book.

The Court: I don't think you will need it on the stand.

The Witness: I mean that is the check book I use daily.

Mr. Abbott: These figures are very interesting, your Honor, and I will want them in the record.

Mr. Cranston: We have no objection to your photostating them.

The Court: You can make photostats of them during the trial, so that he can use his financial rec-

(Testimony of Adolph G. Sutro.)

ords. I don't think we should tie up those that are not essential here.

Mr. Abbott: Very well. Will this book be available during the remainder of the trial?

The Court: Yes. We will mark it here for identification, with the understanding that it may be withdrawn recurrently, providing it is done in the presence of both counsel.

Mr. Abbott: That is agreeable to the government, your [1172] Honor.

The Clerk: That will be Defendant's Exhibit AA, for identification.

(The exhibit referred to was marked Defendant's Exhibit AA, for identification.)

Mr. Cranston: Do I understand the entire book is marked for identification, or just this entry?

The Court: I don't know whether the entire book. I haven't looked at this at all.

Mr. Cranston: There are literally hundreds of entries in there.

The Court: I think the whole of the instrument which was used in the testimony should be marked for identification. Counsel seems to think there is some significance to it that has not appeared as yet.

Mr. Cranston: The whole of that page certainly may be marked.

The Court: I am not going to extend this trial to permit a further investigation on a matter of that kind. I want that understood by the government right now.

(Testimony of Adolph G. Sutro.)

Mr. Abbott: May we go into the matters appearing in this record, your Honor?

The Court: You can go into any matters that they have gone into.

Mr. Abbott: I might point out, your Honor, that in the [1173] course of the examination yesterday we asked for original records, and this book, which does appear to be an original record, was not produced by the plaintiff, and has never been seen by the government before this morning.

Mr. Cranston: Now, Mr. Sutro——

The Witness: This book with these entries——

The Court: Now, if you are going to say anything, say it so that the reporter can hear it, and if she hears it, we can all hear it.

The Witness: Excuse me, your Honor.

This ledger, with these page references, was in the possession of the government yesterday.

Mr. Abbott: The reference was to original books of entry.

Q. (By Mr. Cranston): Mr. Sutro, this account No. 15 contains certain additional entries. What is the next entry on this page?

A. December 30, 1952, 31.9 tons alfalfa hay, at \$32 per ton, 25 per cent, \$252.35.

Q. And 25 cents, I believe.

A. 25 cents. Please excuse me.

Q. The next entry is in 1953, which I take it is excluded by the court's ruling.

Turn to the next account sheet in this ledger, which is entitled, "Rental of pasture." Will you

(Testimony of Adolph G. Sutro.)

read the entries [1174] contained thereon?

A. February 27, 1948, rental of pasture, \$366.25.

Q. And is that the only entry in 1948?

A. There is a journal entry. You mean a credit entry?

Q. That is the only receipt? A. Yes, yes.

Q. The other is a bookkeeping entry to profit and loss? A. Yes.

The Court: I see no advantage in discussing ledger entries that are not different from figures testified to yesterday.

Mr. Cranston: The only purpose, your Honor——

The Court: It is prolonging the case unnecessarily, that is all.

Mr. Cranston: The only purpose was to give the government all the information which we had. In view of your Honor's ruling, we will not proceed further into it.

Q. (By Mr. Cranston): I will ask, Mr. Sutro, however, if the entries contained in this ledger are complete and show all your receipts from the operation of this property.

A. With the exception of \$117.

Q. Now, you have referred to that several times. I show you a check of Rex McDaniel, dated August 7, 1950, for \$117.50, and ask if that is the check to which you have referred. [1175]

A. That is the check to which I have referred.

Q. Has it ever been cashed?

A. No. There was a dispute between Mr. McDaniel and myself over the amount of this check.

(Testimony of Adolph G. Sutro.)

It was a customary dispute between a landlord and a tenant, except it was exactly in reverse. Mr. McDaniel wanted to pay me more money than I wanted to take, so he wouldn't take his check back, and I wouldn't cash it. And that is the situation.

The Court: Has there ever been an entry made in the check book?

The Witness: No, the check has never been cashed, and, of course, it is now of stale date.

Q. (By Mr. Cranston): In other words, you have never received any money upon this check?

A. No. Mr. McDaniel would not take it back, and I just left it.

The Court: He testified to that yesterday.

The Witness: Yes.

Mr. Cranston: I will ask to have this check marked for identification.

The Clerk: Plaintiff's Exhibit 49, for identification.

(The check referred to was marked Plaintiff's Exhibit No. 49, for identification.)

Q. (By Mr. Cranston): You testified that you had received a certain portion of your crop rental in kind, and [1176] later sold that portion. Is the income received from the sale of that portion of your crops contained in the entries which have been referred to?

A. Any moneys received in the form of cash were deposited in the bank. All withdrawals are by check.

The Court: Then is the recordation of those

(Testimony of Adolph G. Sutro.)

transactions entered in this book? That was the question.

The Witness: If it was cash, it went in the books. If it was sold for cash, it went in the books. Does that answer the question?

The Court: I don't know whether it does or not.

Q. (By Mr. Cranston): Have you received anything of value, either crops in kind or in cash, which is not referred to in these books?

A. No, with the exception of that \$117 check.

Q. Mr. Sutro, did you incur certain expenses for disking, grading, spraying, seeds and fertilizer on this property during the period that you have owned it? A. Yes.

Mr. Cranston: Your Honor, I wish to make clear at present what I intend to show by this evidence, and see if this would be permitted, in view of your Honor's statement yesterday when I made a general offer of proof.

My offer now—what I would propose to prove by Mr. Sutro—is that during this period for direct labor in growing [1177] cover crop, for disking, for spraying during this period, he spent certain sums. This involves nothing for traveling expense, nothing of any other nature. It is our position that since the government has gone into the gross receipts, we should be permitted to go into the expenditures.

Now, as I say, I do not wish to go into that if your Honor believes the ruling yesterday precludes it, but it is my understanding that that was entered at a time when no income had been charged to Mr.

(Testimony of Adolph G. Sutro.)

Sutro from the property, and we are entitled to show this as an offset to that income.

Mr. Abbott: The government has two objections, your Honor. The first is the comprehensive objection to the offer of proof yesterday, which included, but was not limited, to this offer.

The second objection is this: That the purpose of the government's inquiry has been to disclose facts which may be material to the ascertainment of rental value. We are not interested in the actual income unless it exceeds rental value, and no such evidence has been produced to date.

The Court: Suppose you ask a question so as to inform the court as to the items, or the character of the items that you have in mind.

Q. (By Mr. Cranston): Mr. Sutro, did you incur expense for labor in growing crops, and in preparing your property for the growing of crops during the year 1946? [1178] A. Yes.

Q. Do your books indicate the amount of such expense? A. Yes.

Q. What was it?

Mr. Abbott: Now, I will object to that, your Honor, on the grounds previously stated, and on the additional ground that the growing of crops is a commercial venture.

The Court: Objection sustained. Not on the ground that it is a commercial venture, however, because that would not be decisive as such, but upon the other grounds stated and discussed by the court previously. The entire case has a commercial flavor.

(Testimony of Adolph G. Sutro.)

Farming, as it is concerned in this case, is a commercial venture, not a pastime or a part of the recreational activities of the landlord.

Mr. Abbott: My expression was rather elliptic, your Honor. The thought was this, your Honor, that this is not an item in mitigation of damages. It is not something that he did to minimize loss. It was something he did to make a profit.

Q. (By Mr. Cranston): Mr. Sutro, you testified yesterday, I believe, that on the pasturage payments for cattle, they were on a per head basis, and that in one instance you believed the amount per head was \$3.00. Is that correct? A. Yes.

Q. Did you receive the entire \$3.00 per head, or a portion [1179] thereof?

A. No, I would receive a portion thereof, because the stubble—the crop would belong to the tenant, so I would receive a portion of the pasture rent.

Q. You were asked yesterday concerning a lease to Mr. McDaniel. You testified that you believed it was in evidence in this case. I show you Exhibit 25, which was introduced, and ask you if that is the lease to which you referred. A. Yes.

Q. You testified also that Mr. McDaniel had to haul his equipment back and forth and that increased his operating expenses. Why did he have to haul the equipment back and forth?

Mr. Abbott: That will be objected to, your Honor, as immaterial. He has testified as to the proceeds of the crop, which would be the only aspect of the relationship immediately relevant.

(Testimony of Adolph G. Sutro.)

The Court: Isn't that reflected in the figures?

Mr. Cranston: The net amount received is reflected in the figures, but I believe the expenses incurred by Mr. McDaniel or the need for hauling equipment back and forth is an indication of the difficulties in operating this property during this period.

The Court: Oh, I think that is an immaterial situation. If we went into all of those matters we would be here for four [1180] years longer.

Mr. Cranston: Very well.

Q. (By Mr. Cranston): Mr. Sutro, you were asked why you had not pumped water from the well in order to save the alfalfa crop in the year 1952 after the Navy ceased the discharge of the effluent into Pilgrim Creek. Can you state what would be involved in such an enterprise?

A. May I ask to which well you are referring?

Q. As to any well.

A. If the wells did not have a sufficient capacity to irrigate by flood irrigation—or, may I start all over?

The alfalfa fields had been laid out, and the checks so constructed as to necessitate a large or comparatively large volume of water being placed on them, a larger volume than the wells by themselves would produce. In other words, it was necessary that storage facilities be provided. It would have required a storage reservoir of a temporary nature, pipelines of a temporary nature, the obtaining of another pump—it is more or less delineated in that letter

(Testimony of Adolph G. Sutro.)

which was sent you—the obtaining of another pump, and if it were desirable to use the new well, the extension of the power lines.

Q. Did you believe such an expenditure was justified?

A. I could see no way that I could amortize my costs during its probable life, and I had no means of determining what its probable life should [1181] be.

Q. You stated that at one time because of the losses sustained as a result of the government's acts, you believed you might have to forego the erection of your residence. Did you ever abandon the plan to erect a residence?

A. No, but I figured that I might have to postpone it.

Q. And do you still plan to build it?

A. Yes.

Q. What size? With two bedrooms?

A. Yes.

Q. Mr. Abbott asked you yesterday concerning the size of the residence. Calling your attention to Plaintiff's Exhibit 44-I, and in particular to the room marked "Library," I call your attention to a portion designated "File." What does that indicate?

A. That indicates a closet of a special size to accommodate a large filing cabinet which I own.

Q. What is the space next to the filing cabinet designed for?

A. That was designed for the customary stationery and business supplies.

(Testimony of Adolph G. Sutro.)

Q. There is a dotted line near that. What does that represent?

A. That represents quite a bit of argument with the architect over putting a drawing board or drafting board into a library. But, nevertheless, I had my drawing board placed [1182] here near the north light.

Q. What is the place in the area marked "Book Shelves"? A. My library.

Q. What is the nature of your library?

A. Largely technical.

Q. What was to be placed in an area marked "Map Cabinet"?

A. This size, 41x38, fits a blueprint cabinet which I already possess, and which would fit in here without any further construction.

Q. What was the purpose of placing these items in the library?

A. I figured on transacting my affairs there.

Q. I call your attention to two rooms at the other end of the house.

A. May I make that clear: I didn't expect to have every Tom, Dick and Harry piling in there, but I did expect to use it for purposes for which a library is more or less used, in combination with a, shall we say, private office.

Q. I call your attention to a room marked "Utility," and ask you what was the purpose of that room?

A. That had a chopping block, and special tables, and everything. It was intended to use that for the

(Testimony of Adolph G. Sutro.)

processing of any farm crops for the benefit of the people living on the ranch. [1183]

Q. I notice that appears to be more or less tied into and yet separated from the balance of the property.

A. Yes, it is completely separate from the house. It is an adjunct of the cold storage room.

Q. And what was the cold storage room for?

A. For the same purpose, for keeping food products for the people on the ranch.

Q. And what was this compressor room for?

A. That was for the refrigeration equipment.

Q. You have been asked concerning the number of tools in your repair shop. What are the facilities for the repair of machinery and equipment near to your property?

A. Practically non-existent.

Q. What repairs did you wish to perform upon your tools with this equipment?

A. Anything which might be necessary.

Q. Yesterday you were asked if you could estimate the acreage of various areas which had been planted. I call your attention to Plaintiff's Exhibit 32, particularly, to an area near the south portion of Pilgrim Creek, and to the east thereof, south of field No. 6, which had been planted by Mr. Brown at the time you purchased the property, and ask if you had estimated the area contained in that field.

A. Yes.

Q. What did you estimate it to be? [1184]

A. I was attempting to be conservative, and I

(Testimony of Adolph G. Sutro.)

estimated it at four acres. It appears on our records, I believe, as Field X, the unknown quantity, if I remember rightly.

Q. What is the actual acreage of that field, according to your best information?

A. I talked to a soil enginer last night, who had just completed a survey, and he told me it was 6.88 acres.

Q. And that field, which is not marked on this map, lies to the south of Field No. 6; is that correct?

A. Yes. There is an intervening row of hills.

Mr. Cranston: That is all, Mr. Sutro.

Recross-Examination

By Mr. Abbott:

Q. Mr. Sutro, are there any automotive garages in the city of Oceanside? A. Yes.

Q. How many? A. I never counted.

Q. How far are those from your ranch?

A. Oh, about the same distance as Vista; around six miles, I would estimate.

Q. Do you recall testifying that the total receipts from the alfalfa crop grown on your land by Miss Whelan—the proceeds to you were \$1,039.66?

A. May I look at the report from which I was testifying? [1185]

Mr. Cranston: I think I have a copy of it, Mr. Sutro.

The Court: I don't believe it is so much a question of what he recalls testifying. Ask him what he

(Testimony of Adolph G. Sutro.)

did testify to, if you know what he testified to.

Mr. Abbott: The question is really preliminary, your Honor.

Q. (By Mr. Abbott): Did you testify to a rental of that sum?

A. May I check what this report shows, and then I will tell you, because this is what I was testifying from. What date, Mr. Abbott?

The Court: 1950, Whelan.

The Witness: 1950. I testified I had received \$1,039.66 income, hay. That is what this report says, and this is what I was testifying from.

Q. (By Mr. Abbott): Well, looking at this, what appears to be an original record, a check register now marked for identification, the figure to which you testified yesterday is a net figure after several arithmetical computations were effected, is it not? A. Yes.

Q. It is not the gross proceeds of the crop received from Miss Whelan, is it?

A. It is this figure.

The Court: Well, I can't see that. [1186]

The Witness: Excuse me, your Honor.

The Court: Read it.

The Witness: \$1,039.66. Mr. Abbott, may I point out one thing to you: I told you yesterday I had nothing to conceal. A man does not ask for a congressional investigation——

The Court: Just a minute, now.

The Witness: ——if he has anything to be ashamed of.

(Testimony of Adolph G. Sutro.)

The Court: Mr. Sutro, you will have to stop, and answer the question.

The Witness: Excuse me, your Honor. I apologize.

The Court: This could go on, and on, and on.

The Witness: Excuse me, your Honor. I merely said you don't ask Congress to investigate——

The Court: Just a minute.

The Witness: Excuse me.

Q. (By Mr. Abbott): Mr. Sutro, there is nothing personal intended in any of the questions I ask you. I am here to represent the government, and to endeavor to ascertain the facts.

A. I am only too happy to give them to you, to the best of my ability.

Q. Very well. Let's briefly go over the computations of that figure. In your original books of entry I find the following items used in its computation: 28¾ tons of hay, at \$25 per ton, under the heading of "Sold Whelan Ranch 1950"——

A. Wasn't this read a moment ago, Mr. [1187] Abbott?

Q. No, sir. Your counsel, or you read, in response to your counsel's question, from the left-hand column.

A. No, I read the entire thing, Mr. Abbott, from the beginning to the final conclusion.

Q. All right. I stand corrected. The question I am getting at is this: What was the source of the hay sold to the Whelan Ranch in 1950?

A. Well, it was either their own hay, or hay that

(Testimony of Adolph G. Sutro.)

McDaniel had left over. I can't tell by looking at that.

Listen, it was hay produced on the property, whether Whelan produced it or whether McDaniel produced it. I can't tell by looking at a bale of hay who the grower was.

Q. But it was your hay, was it not?

A. Yes, it was my hay.

Q. And is the same thing true of the second hay item of \$37.50, and for the alfalfa item of \$190?

A. Well, I couldn't have sold it, if it wasn't mine.

Q. Then all of that was income from the ranch, was it not, Mr. Sutro?

A. I would so consider it.

Q. Then the gross proceeds of crops grown on the ranch received by you on November 15, 1951, was the \$2,354.45, was it not?

A. I believe that was testified to just a few moments ago, when this record was read. [1188]

Q. You testified yesterday, Mr. Sutro, and your testimony was, was it not, that the proceeds received at that time were \$1,039.66, a figure of less than one-half of the earlier figure?

A. May I call to your attention that you had my ledger. I was reading from this report.

Q. I will show you this document I had, and I will ask if you can show me the figure we have just been talking about in that document.

A. Pardon me for grinning, Mr. Abbott. I assure you I am not in any way doing it disrespectfully.

(Testimony of Adolph G. Sutro.)

It is merely attempting to get me to answer accounting questions.

Q. I asked for this record yesterday, as the record will show.

A. What page are you looking for, Mr. Abbott?

Q. You said that I had the record which would show.

A. I said you had this ledger yesterday. I don't know what is in it. Hay was account 15.

Now, what is your question?

Mr. Abbott: Now, does this ledger which I have——

The Court: Just a moment.

Mr. Abbott: Yes, your Honor.

The Court: You did ask him a question as to gross income, and I think that Mrs. Zellner can look it up and read it.

Mr. Abbott: Can you do that, Mrs. Zellner, at this time? [1189]

(The record referred to was read by the reporter, as follows):

“Q. Then the gross proceeds of crops grown on the ranch received by you on November 15, 1951, was the \$2,354.45, was it not?

“A. I believe that was testified to just a few moments ago, when this record was read.

“Q. You testified yesterday, Mr. Sutro, and your testimony was, was it not, that the proceeds received at that time were \$1,039.66, a figure of less than one-half of the earlier figure?

(Testimony of Adolph G. Sutro.)

“A. May I call to your attention that you had my ledger. I was reading from this report.

“Q. I will show you this document I had, and I will ask if you can show me the figure we have just been talking about in that document.”

The Witness: Yes, apparently that is correct, and apparently the ledger shows the net receipts.

The Court: What do you mean by “apparently”?

The Witness: It does show the net receipts. I am very careful regarding my statements regarding accounting, your Honor.

Mr. Abbott: Your Honor, I will ask to put in evidence the particular sheet in the original record, the check register which has been the subject of this inquiry, and the particular [1190] sheet in the ledger, and offer them as the government's next in order.

Mr. Cranston: There is no objection, your Honor, if later photostats may be substituted so that the original records may be removed by the plaintiff.

The Court: Surely, and the photostats should be furnished by the government, and not by the plaintiff. The books will be left here with the reservation that the court has previously stated, they being current check books which the witness states are necessary for use in his business, current business, and I don't suppose even the government wants to tie up the man's business, unless it is material to the

(Testimony of Adolph G. Sutro.)

subject matter of the trial, and current matters are not material. The court has definitely ruled as to the decisive dates.

(The exhibits referred to were received in evidence as Defendant's Exhibits BB and CC.)

Mr. Abbott: We are anxious not to inconvenience anyone in this respect, your Honor. I only wanted the particular pages, and those will be photostated by the government, and if counsel is agreeable, the photostats will be substituted for the particular pages referred to, and the government will stipulate to the withdrawal of the original records. I do think these records are most important, in view of the witness' testimony yesterday, your Honor.

I have no further questions at this time. [1191]

Redirect Examination

By Mr. Cranston:

Q. Mr. Sutro, just one question or two. You were asked yesterday about accounting in general, and the accounting for the Sutro Baths. What accounting system was followed for the Sutro Baths?

A. Well, as I am a little doubtful about my accounting ability, I put in a very complete, comprehensive accounting system, which was kept up to the minute, and a system which independent auditors, when they have come in, have always uniformly praised for its completeness and its accuracy, and the fact that almost any information necessary could

(Testimony of Adolph G. Sutro.)

be obtained from it. However, that didn't help me particularly.

So, as far as my personal reports on the business were concerned, we had many departments, we had many accounts, we had many various things, which required rather close watching, and I had all my operating accounts transferred to graph paper in a book the same size you are using, Mr. Cranston. There were about 15 of them.

The graph was posted weekly. We will say, as of today the graph would show the gross receipts to this day. It would also carry on the same page the receipts for the entire year 1953. I think that preceding year was green. It would also carry the entire receipts for the year preceding that, which would be 1952. I think that was a red line. [1192]

By looking at one chart, I could tell my receipts any time during the preceding three years, and which way the trend was, and if there was any noticeable change from the normal expectations at that time of the year.

That system was carried through all my operating accounts, from fuel oil consumption, the receipts of the various departments, the payroll, and so on, so that I could get a complete picture of my entire business in less than 15 minutes.

Apparently, there must be some merit to the system, because the people who took over the business continued it, and I am told that about three months ago they hired my auditor to go into their

(Testimony of Adolph G. Sutro.)

business and install the same method of graphic presentation of all operating accounts.

Q. Then you examined the graphs and not the books in connection with the Sutro Baths' operations?
A. That is correct.

Q. Did you deem it feasible to install a graph system for receipts and disbursements on this property?

A. Not for a salvage operation, although I can tell you when we operate a vegetable business, there will be a cost accounting system there that will be a dandy.

Mr. Cranston: That is all.

Mr. Abbott: That is all.

The Court: I think we will take our recess now for a [1193] few minutes.

(Short recess.)

Mr. Abbott: Your Honor, the clerk has asked that I further identify the government's last offer.

Exhibit BB, last offered by the government, consists of a single page, unnumbered, in a book entitled "Ekonomik Check Register," which page is headed May 28, 1951.

Government's Exhibit CC consists of a single page in what appears to be a ledger. The page is headed, "Account No. 15." Opposite the printed word "Name" appears the handwritten entry, "Income—Paid." The page can be further identified as lying just behind tabular marker "I" in the ledger.

Mr. Cranston: Do you mind if I call Mr. Sutro

for two questions in connection with these last exhibits?

The Court: I don't think so.

Mr. Cranston: I wanted to inquire into the handwriting, that was all; not to go into detail.

The Court: No, later on it can be supplied, if necessary.

(Witness excused.)

Mr. Cranston: Mr. Burlake. [1194]

JOHN MICHAEL BURLAKE

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: John Michael Burlake, B-u-r-l-a-k-e.

Direct Examination

By Mr. Cranston:

Q. Will you state your name, please?

A. My name is John Michael Burlake.

Q. And what is your profession or occupation?

A. I am an appraiser.

Q. What position do you hold at the present time?

A. I am associated with the American Appraisal Company, whose headquarters are in Milwaukee, Wisconsin, and for whom I am the West Coast or Pacific Coast Production Manager.

Q. What school or college did you attend?

(Testimony of John Michael Burlake.)

A. I attended Worcester Polytechnic Institute, Worcester, Massachusetts, from which I graduated as a Bachelor in Civil Engineering in 1929.

Q. What did you do after graduating from Worcester Polytechnic Institute?

A. I joined the American Appraisal Company, and have been associated with them continuously since 1929, excepting for 44 months in military service. [1195]

Q. Will you state what your duties were for the American Appraisal Company?

A. When I joined the company I was one of a class of engineering appraisal students, and I spent about 1½ years in this position, during which time I had formal classes and practical application of appraisal principles, as taught and practiced—as taught to me, and as practiced by the company in both field and office; in the making of inventories of structures and industrial plant equipment; the application of unit costs to them; and the observation and recording of factors of depreciation; also, the filing of these processes through the office, which involved the operations of checking field work, the application of the major part of unit costs, in addition to those already applied in the field, and otherwise following the appraisal field papers through to the compilation of the report. That was the general scope of the training period.

Following that, for about a year, I was a staff field appraiser, continuously engaged in the field oper-

(Testimony of John Michael Burlake.)

ations of inventorying and evaluation of property, largely industrial and commercial.

Then for a period of about seven years I was located in the home office at Milwaukee, and there I did research work in the investigation of construction cost data, the construction of unit costs from the analysis of the available data, and the [1196] application of those unit costs on certain specific and special problems. This occupied me for about two years, comparatively full time.

From then on I had general responsibility for the execution of research work, under the supervision of a vice president of the company, and this research went into all matters of special problems and field procedures that had to do with special industries that presented economic or operating or depreciation problems.

I was, during this period, still active in the actual work of making appraisals and the estimating or applying of unit costs, as necessary, on these particular special assignments that I undertook.

I otherwise assisted the officers of the company in the reviewing and checking of the field work done by others on specific appraisal problems, where values were involved, and wrote reports.

I had charge and responsibility for the development of instructions for field procedures. I hired personnel, and I supervised them in their initial training periods.

Generally, that accounted for the period from

(Testimony of John Michael Burlake.)

about 1932 to 1939, and on into 1942, when I entered the service.

Q. During this time did you do appraisal field work?

A. I did considerable appraisal field work in various parts of the country, including California, in which I executed [1197] a number of engagements at that time, more precisely from about 1935 to 1936 and to '39.

Following upon the completion of my service with the Armed Forces, I located in Northern California and was senior appraiser in charge of or responsible for the production work carried on in that area, and also was active upon special engagements in Southern California.

During the past, approximately two years, I have been located in Southern California, with offices at 210 West Spring Street in Los Angeles, and I am responsible for the conduct of all appraisal matters having to do with field execution and processing of such reports as are issued from the local office.

Q. How many men are on your staff?

A. At the present time I have about 10 or 12, depending upon whether certain individuals have gone to an eastern assignment or not.

The Court: Did you say 210 West Spring Street? I can't orient myself.

The Witness: 210 West Seventh Street. I beg your pardon. Thank you.

Q. (By Mr. Cranston): Do you plan and supervise the work in this office?

(Testimony of John Michael Burlake.)

A. I do. I have full responsibility for the planning and staffing and supervision of execution and the necessary [1198] checking operations and final processing, to the point where on reports issued from the local office, I apply my signature.

Q. In the work which you do in connection with appraisals, is the matter of reproduction cost involved?

A. Almost invariably, in an appraisal which involves valuation of tangible property, reproduction cost is involved. It may not be the ultimate determinant, but in any case it is at least a starting point.

Q. Have you in the past, testified, or done work in connection with appraisals for litigation involving the motion picture industry?

A. I have. I was active in the recent case between the Department of Water and Power and the Metro-Goldwyn—oh, I beg your pardon—the Goldwyn Studios, in which I conducted the investigation on the inventorying of the property and the cost of reproduction figures used by others in arriving at valuations.

Q. Have you testified in other actions involving appraised valuations?

A. I have. Recently in a case involving the value of a lumber—retail lumber and building materials company, as to the land, buildings, equipment inventory, and business value.

Q. Have you contributed to any texts dealing with appraisals?

A. During 1939 I contributed six or seven chap-

(Testimony of John Michael Burlake.)

ters to a [1199] text then being prepared by the American Institute of Real Estate Appraisers. These chapters had to do primarily with the physical improvements of commercial properties, and the factors of investigating them for condition and such requirements as alterations and rehabilitations, to be used in processing a value estimate.

Q. Do these involve buildings and improvements upon the property? A. They do.

Q. Can you tell us something about the American Appraisal Company for which you work?

A. The American Appraisal Company is a personal service organization, established in 1896, and since then continuously engaged in the investigation and valuation of property.

It has currently a staff of about 600 employees, of whom the major part are of specialized training and experience in the conduct of field investigations, the determination and application of unit costs to both construction and equipment, and the necessary other operations, up to the typing of a report.

It maintains continuous research and contact with manufacturers, distributors, dealers in equipment and building materials, and it processes this data and applies it to the inventories produced by the field staff.

During the approximate 60-year period of our existence, [1200] there have been in excess of 100,000 separate properties appraised by us for all manner of clients, including various instrumentalities of national, state and local governments, and for all of

(Testimony of John Michael Burlake.)

the various purposes for which a property investigation as to the extent, character, condition or value of property might be involved.

Q. Does the company retain in its files all working papers?

A. We retain all working papers, and also all cost data at any time assembled for the historical purposes that occasionally arise in the making of valuations.

Q. And do these cost figures which the company has maintained, go back to the year, 1895?

A. They go back to the year, 1895, and prior to that.

Q. Has the American Appraisal Company acted as sole appraiser or arbiter of value in various cases?

A. To my knowledge, the American Appraisal Company has acted in the capacity of sole appraiser in numerous cases, although it may not necessarily be true that the agreement to so act was necessarily a formal legal document, but it might have been a meeting of the minds in more cases than not, where we have made appraisals which were to be the sole appraisals upon which an action, such as a judicial sale or other negotiation was to be conducted.

Q. Did one such recent incident here in Southern California [1201] involve an aircraft factory?

A. Well, it happened to be in Tucson, where we made an inventory and appraisal of a substantial aircraft factory upon the agreement of the two interests involved that we would be the sole appraisers.

(Testimony of John Michael Burlake.)

Q. Does the American Appraisal Company itself own any real property?

A. No, we do not. We do not own, operate, buy, sell or build property, with the exception of our office furniture, fixtures, supplies and records.

Q. Does the American Appraisal Company, during the course of its operations, appraise buildings which have recently been completed, and what is the purpose for such appraisals?

A. In the normal course of our operations, we appraise property which has been completed at any time in the past, and is still in existence, and that would include buildings that are recently completed, and in some cases are in the course of construction.

Q. What is the purpose of such appraisals, and what use is made of the information derived therefrom?

A. The purpose of an appraisal of a building recently completed is normally either because it is a part of the whole, of which it is possibly a relatively small part, or it may be, of course, a single building in which the determination and [1202] classification of the costs may be desired.

I may explain: When a structure is erected and equipped, there may be only a single cost available to the owner, and for purposes of analysis and operating reasons he may want a distribution of those costs to the respective parts of the building and the equipment that goes with it. In such case, an appraisal is of definite service.

Q. At the time the appraisal is made, do you take

(Testimony of John Michael Burlake.)

into consideration the actual cost of the building which has recently been constructed in such a case?

A. We consider all evidence that we have. We have occasion at times to analyze the actual costs, based upon such cost data as is available from the contractors, and their billings, and otherwise, other types of records that may have gone on to the owner, into the owner's possession.

Of course, in any case where there is a substantial disagreement between our appraisal and the record of costs, we make necessary analyses to determine what the causes of the disagreement may be, both as a matter of checking on our own processes and units of cost, and also to resolve the issue, because the owner may want to know.

Q. Mr. Burlake, have you been called upon by Mr. Sutro to make such analysis as to the cost of erecting certain buildings and improvements as of the year 1946, and as of two dates in 1953 and in 1952? [1203]

A. We were; or we did, whichever the question was.

Mr. Cranston: If the court please, I will ask to have this document marked as our next exhibit for identification at the present time, and I will hand counsel a copy.

The Clerk: This will be Plaintiff's Exhibit 50, for identification.

(The document referred to was marked Plaintiff's Exhibit No. 50, for identification.)

(Testimony of John Michael Burlake.)

Q. (By Mr. Cranston): I show you the document which has been marked Plaintiff's Exhibit 50, for identification, and ask you if this is the report which you prepared pursuant to this request.

A. This is the report, and it carries my signature.

Q. And I notice you have a document in front of you.

A. I have a carbon copy of that.

Q. I will first ask you this question: When Mr. Sutro first asked you to make a report, what was the second or final date which you were asked to consider?

A. The second date was July 21, 1952. I may verify that, because a day off may be pertinent or not.

Q. I believe that——

A. July 21, 1952, is the date.

Q. I believe you probably misunderstood the question, or it was not properly phrased. You were asked originally to make appraisals as of 1946, and as of what other date? [1204]

A. Oh, I'm sorry. As of approximately the third quarter of 1952.

Q. 1953, wasn't it?

A. Or 1953. I beg your pardon.

Q. Calling your attention to the page marked 1 in this report, you, on January 29th, actually made a report giving certain figures showing the increase between 1946 and 1953; is that correct?

A. That is correct.

Q. And then were you later requested to make

(Testimony of John Michael Burlake.)

additional findings and to render a report showing the increase in cost to July 21, 1952?

A. Yes, we were; almost immediately thereafter.

Q. I believe it was the same afternoon. Will you state the method in which your findings have been incorporated into this volume, that is, the mechanical make-up of the volume?

A. The mechanical make-up is based upon a letter transmitting the results and premises of our investigation; a summarized statement of the comparative costs, arranged by classification of property, bringing together the total costs for property of substantially like kind and character, followed by an inventory which presents the technical description and identification of property units or groups of units with the comparative costs for each such item of property set out in the inventory as of the one date or the other which is being [1205] compared.

Now, the request for a comparison as between 1952 and 1946 was complied with, and implemented by a set of addenda sheets here in this report, which are in all cases identified with a letter suffix to the page number, and follow the originally compiled sheets, and set out the 1952 versus 1946 comparison of the same data that was presented in the preceding sheet as of the earlier date selected, or the date selected earlier, between 1953 and 1946.

Q. Do these later pages, which contain the 1952 information, contain the details as to specific items

(Testimony of John Michael Burlake.)

included under general headings, or do they refer to the previous pages?

A. They refer to the previous. They are heading identifications, you might say, or brief identifications, which do not repeat all the detailed technical description, but are in sufficient detail only to positively identify the item.

Q. Yes. Now, will you state, Mr. Burlake, the procedure which was followed in preparing this report, what investigation was made, and what information you relied upon?

A. In executing this report, I assigned our Mr. J. W. Lennis to proceed to the property, and to investigate the information available therefrom, and to obtain such additional information as was necessary, and which Mr. Sutro furnished us.

The information furnished by Mr. Sutro consisted of such drawings, blueprints, designs and specifications as were in [1206] existence, supplemented by the necessary discussions to elaborate upon them where they were not precisely clear and complete, and from this information, then, the quantities, type, kind, and quality of materials used were assembled into our working papers, and in inventory form, and they were susceptible to the application of detailed unit cost.

Q. Have you yourself also been upon the Sutro property?

A. Yes, I myself spent a morning on the Sutro ranch, following upon the stay of Mr. Lennis, and I myself followed through in all necessary checking

(Testimony of John Michael Burlake.)

operations and consultations with Mr. Lennis, and particularly, more particularly, on the improvements such as irrigation works and similar matters that were not the frame structures on the property.

I would say, if I may add an explanation, that Mr. Lennis was instructed to make the appraisal of the building improvements as such primarily, and I accepted the responsibility for checking him on that phase of the work and carrying on the balance of it.

Q. Now, you have here certain documents. Are these the references and notes which you used, and certain drawings and maps?

A. They are. These are the documents that I brought in this morning, and which were used in the execution of the work, although they are not complete here, because some had, of necessity, been returned to Mr. Sutro for the use of others. [1207]

Mr. Cranston: May it please the court, I was going to show the witness these various exhibits which have been introduced in evidence. He has examined them. I do not wish to inconvenience the gentleman who is looking at them now, but, for the sake of the record, I want the record to show that he examined the exhibits. If counsel will stipulate to that, all right. Otherwise I will have to show him the documents.

Mr. Abbott: I will stipulate he has seen the documents in evidence.

Mr. Cranston: Then that stipulation would cover the fact that Mr. Burlake has seen the documents

(Testimony of John Michael Burlake.)

introduced into evidence as Plaintiff's Exhibits 38, 39, 44-A, -B, -C, -D, -E, -F, 44-H and -I, I-1, I-2, I-3, I-4, 44-J, 44-J-1, 44-K 44-K-1, and 44-M. That is, they are the original blueprints, the topographic maps, the grading plans and specifications, these documents which have been introduced into evidence.

Mr. Abbott: We will stipulate that the documents were shown to the witness, and he would testify he has seen them.

Q. (By Mr. Cranston): From the drawings and examination of the ground conditions, what did you then do?

A. We made further investigation locally as to the prevailing rates of pay for construction labor and construction materials as of the respective dates that were to be involved in the work. We, from this data, determined or constructed our unit costs to apply to the inventory of the quantities of [1208] materials and construction and equipment that was evident from the available records, plans and data. We——

Q. Pardon me?

A. We consulted, as I said, with building material people, and I meant to say with local building material dealers, and with sources of labor information. We checked this information obtained in this manner against information already in our files and records, as accumulated on prior work done in the same locality for others.

Q. And did you check with the records in your home office on occasion?

(Testimony of John Michael Burlake.)

A. In this particular case we did not check with the records in our home office on building material costs or wage rates, because we have a local record of anything that has been transmitted to the home office, so that we had the initial data already for the checking purposes.

Q. Did you—or, I will ask you this: How did you obtain the dimensions, sizes, the number of lineal feet for different substances which would be used in the construction?

A. Those matters were determined from the dimensions as shown on drawings or the scaling of scale drawings, which were not dimensioned in detail otherwise, so that, generally, for a structure the dimensions were evident from the drawings and were checkable by scaling. For items out in the field, such as irrigation works, Mr. Sutro in some cases—— [1209]

The Court: Pardon me just a minute.

The Witness (Continuing): ——Mr. Sutro had in some cases furnished us with his take-offs of quantities, and we checked those by presumably repeating the same operation, by scaling, or counting, or otherwise measuring from the drawings, and thereby determining independently the reasonableness of those quantities.

Q. (By Mr. Cranston): Now, your original computations were made to determine the difference between 1946 and 1953, in the manner you have related.

A. That is right.

(Testimony of John Michael Burlake.)

Q. What did you do, then, when you were requested to obtain the information as of 1952?

A. We made a turn-about and repeated the investigation that already had been made for 1953 conditions to apply as of 1952, which meant in many cases going back to sources of information, who were individuals or vendors, and re-examining the selling price of an item as of the earlier date.

Q. Then the work for 1952 was not merely an arbitrary percentage of 1953?

A. No, it was not. On certain very minor items it might have been, but there was no arbitrariness about it, as to the application of percentages without investigation.

Q. Now, do the figures which you have set forth in your report include allowances for overhead and contractors' [1210] profits?

A. They do. They include allowances for construction overheads, upon the assumption that the work would be done by a contractor, or an individual who would assemble a staff the approximate equal of what a contractor would be using in the construction of a project of that size and character.

Q. Is the allowance which you have made for overhead and profit a constant allowance, or does it depend upon circumstances?

A. It is not a constant allowance because it is a factor of variable size or proportion, but necessary to arrive at the total and complete cost of a construction project.

I might illustrate in this way: If the source of the

(Testimony of John Michael Burlake.)

data is such that the cost as given to us and as used by us is directly the cost to the owner, nothing is added, as might be the case in irrigation pipe, which is furnished by pipe manufacturers on a basis of engineered and installed in the field. There we have added no factor of overhead. But in the case of a structure which involves many trades and possibly subcontractors, or the equivalent of them, and many indirect costs which cannot be assigned specifically and directly to a particular piece of material or equipment, the overheads are applicable on the basis of analyses as to what normal overheads are in such conditions.

Q. Now in determining the nature of the material to be [1211] placed in any structure or improvement, if there was no definite statement in the information furnished you as to the quality, what quality did you select?

A. We used or selected the quality that was in our experience normal for that type and character of installation. ..

Mr. Cranston: Your Honor, I think I have about concluded the qualifying questions.

The Court: You think you have about concluded?

Mr. Cranston: I think I have.

The Court: Can't you conclude?

Mr. Cranston: Yes, I have.

The Court: We will take our recess now until 2:00 o'clock.

(Testimony of John Michael Burlake.)

(Whereupon, at 12:00 o'clock noon, March 4, 1954, a recess was taken until 2:00 o'clock p.m. of the same date.) [1212]

Thursday, March 4, 1954—2 P.M.

The Court: Proceed.

JOHN MICHAEL BURLAKE

the witness on the stand at the time of recess, having been heretofore duly sworn, resumed the stand and testified further as follows:

Direct Examination
(Continued)

Mr. Cranston: I notice that in the list of documents which I referred to as having been submitted to the witness, I neglected to include Exhibits 40, 44-G, and 44-L. Will it be stipulated that the witness also saw those documents, Mr. Abbott?

Mr. Abbott: We will stipulate that if asked whether he had seen them, when presented with the documents, the witness would testify that he had.

By Mr. Cranston:

Q. Mr. Burlake, based upon the procedure which you referred to this morning on the documents which were presented to you, and the pioneer inspection of the premises, have you determined what the cost of reproduction of the six buildings which are depicted in the various blueprints would have been in the year, 1946?

Mr. Abbott: Your Honor, at this time, the government would like to make a single objection, which,

(Testimony of John Michael Burlake.)

if counsel will so stipulate, will be applicable to all the evidence to be [1213] given by this witness, and that is this objection: That the testimony called for by the question under consideration, and all subsequent questions of this witness, is evidence inadmissible because it is irrelevant and immaterial, and does not constitute the proper measure of damages under the Tort Claims Act.

We may from time to time have additional specific objections, but we would like the stipulation that that objection in particular is applicable to the entire testimony of the witness.

Mr. Cranston: That is, that the difference in building costs is not the proper measure of damages.

Mr. Abbott: Well, the objection, as I stated it.

Mr. Cranston: I will stipulate that that may be considered as made to the entire line of testimony.

The Court: The objection is overruled.

Mr. Cranston: Now, will you read the question, Madam Reporter?

(The question was read.)

The Witness: Yes, I have.

Q. (By Mr. Cranston): And what, in your opinion, would that cost have been?

A. In my opinion, that cost would have been the sum of \$43,268.

Q. And have you determined what the cost of reproducing [1214] the same buildings, according to the same plans and specifications, would have been as of July 1, 1952? A. Yes, I have.

Q. What would that cost have been?

(Testimony of John Michael Burlake.)

A. That cost as of 1952 would have been \$77,273.

Q. Are the details making up those totals set forth on pages 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, and on pages 6-A, 9-A, 13-A, 16-A, 19-A, and 21-A of your report, which has been identified as Exhibit 50, for identification in this case?

A. They are.

Q. Based upon the same procedure and documents, have you determined what the cost of sewage for these buildings would have been in the year, 1946?

Mr. Abbott: Your Honor, in addition to the objection previously stated, there is this additional objection: That this evidence is outside the scope of the court's ruling, because by Mr. Sutro's testimony, the only plans relative to a sewage system appear on plans drafted in 1946, but with the lines relative to that system added in late 1953. Those are the red lines that appear on the ground chart.

The Court: Objection overruled.

The Witness: The answer is that I have.

Q. (By Mr. Cranston): What, in your opinion, would the cost of constructing such a system have been in the year 1946? [1215]

A. It would have been, for the portions of the sewage system outside of the building lines themselves, the sum of \$1,483 in 1946.

Q. Have you made a similar determination as of July 31, 1952?

A. Yes, I have.

Q. What would the cost at that time have been?

(Testimony of John Michael Burlake.)

A. The sum of \$2,730.

Q. Mr. Burlake, in arriving at these figures, did you consult with any public authorities?

A. Yes, I did. It was necessary because, although Mr. Sutro's data as presented to us indicated the location and size of lines and other details pertinent thereto, it did not specify the precise form or size or type of septic tanks to be used. It merely indicated that they would be used. So on that phase of it, we determined from the County of San Diego what the requirements would have been, and based the determination upon that.

Q. Have you determined, Mr. Burlake, based upon the investigation to which you have previously referred, what the estimated cost of land leveling, lawns, grading curbs, and landscaping to these buildings would have been in the year 1946?

Mr. Abbott: Your Honor, we have the additional objection that there is no evidence of any kind relative to those [1216] improvements described in the last question. Not even the charts that the witness made in late 1953 contain that data.

Mr. Cranston: If the court please, possibly further questioning of the witness prior to the ruling by the court might be of assistance.

Q. (By Mr. Cranston): Mr. Burlake, what is the custom followed in appraising to determine the reconstruction cost of buildings, with reference to curbs, landscaping, grading, and similar matters?

Mr. Abbott: Objection. It is immaterial and irrelevant, your Honor.

(Testimony of John Michael Burlake.)

The Court: I don't recall any evidence at all to this time that would furnish a predicate for that, as an item of damage.

Mr. Cranston: Your Honor, the question is directed to the fact that in the construction of buildings, one item to allow normally is for landscaping. That is, when buildings are prepared, one of the incidents is the landscaping surrounding the building. If this witness can testify such is the fact, and that the same practice was followed here, it seems to me that is material, and is included within the plans, in the same manner in which it is normal to put lath or plaster on a wall.

Mr. Abbott: Your Honor, I don't think the analogy is quite apt. What landscaping? Is it to be a small public park, [1217] or a small plot of 10 feet of grass? We have no way of knowing.

Mr. Cranston: The witness can testify to the area of landscaping, the amount that was considered, and the manner in which he arrived at his figures.

The Court: Yes, I know, but that does not furnish the court with the information, even under the theory of that concept, because there is no evidence, as I recall, by Mr. Sutro, or anybody else, that details the specific type of landscaping or improving of property around these houses. I don't recall anything in the record that warrants that, and we can not permit an appraiser to simply say that it is the custom. What custom? We are particularly concerned with a specific project, not with any generalized or suppositious situation.

(Testimony of John Michael Burlake.)

Mr. Cranston: Your Honor, it appears to me that a garden or a lawn is a natural and almost necessary accessory to a building, which is of any size, of any dignity, particularly where it is located in a large area.

The Court: Yes, but we are talking about a farming appurtenant. We are not talking about a residential section, or a palatial home in a farming community, because there is no evidence to support that, excepting that the plans, the specifications and the evidence are here as to what was in Mr. Sutro's mind, and as to what is delineated upon the physical objects that are in evidence. But to permit an appraiser, [1218] when he isn't a party to the action at all, he is simply here as an expert, to say, "Well, the average farmer would build a beautiful landscaped lawn, surrounded by ornamental trees," when we know from common knowledge that that is not the case generally, and it depends entirely upon the individual, is not material. I think we are getting into a realm of speculation and conjecture as far as money damages are concerned. The objection will be sustained.

I wanted to clarify an item in the index. There is an indexing here of miscellaneous improvements. Is there in that classification the matters that counsel has adverted to?

Mr. Cranston: Yes, those are the matters, your Honor, as to which I was referring.

The Court: I don't think we can, with any se-

(Testimony of John Michael Burlake.)

curity, in view of the record that is made here in this case so far, permit the witness to state anything concerning that matter.

Mr. Cranston: Very well.

Q. (By Mr. Cranston): Mr. Burlake, have you formed an opinion as to the cost of reproducing in 1946 the domestic water supply system which is delineated on the plans that you inspected, and what is that cost? A. I have.

Mr. Abbott: Pardon. We have an objection to that. It is not clear to government counsel as to whether the question is directed to plans in evidence. [1219]

Mr. Cranston: The plans in evidence which were submitted to the witness.

Mr. Abbott: Thank you.

The Witness: The answer is: I have.

Q. (By Mr. Cranston): What is that cost?

A. This cost, as of 1946, and I probably should state that it includes certain drains as well as water supply lines, is found to be the sum of \$3,997 for the piping and water tank associated with the system.

Q. And what would the cost for the same items be in 1952, as of July 21st?

A. In 1952, the sum of \$6,737.

Q. I note in the report that you have prepared dealing with irrigation works, on page 27 and on page 27-A, there are certain items starred with an asterisk. What does the asterisk indicate on those pages?

(Testimony of John Michael Burlake.)

A. The asterisk indicates that those starred items are tabulated in the column of 1946 appraised costs, but represent costs that would have been incurred in these exceptions in 1950, because the information at hand indicated that the plans for their installation were initiated in 1950, after certain water discoveries were made.

Q. Have you determined, then, the cost of the works referred to as irrigation works either in 1946, or, in the case of those items starred with asterisks, in 1950? [1220]

A. Yes, we have.

Q. And what is the cost?

A. The sum of \$38,726.

Q. Does that include an allowance for certain 8-inch steel pipe, which was to have been installed in 1946, but will not now be installed?

A. Yes, it does.

Q. And the amount of that allowance is how much?

A. The amount of that was \$621 as of 1946. There is no cost estimated at the later date.

Q. With the exception of that one item, what would the cost of reproduction in 1952 be of the items for irrigation works?

A. The sum of \$55,006.

Q. Based upon the material submitted to you, have you formed an opinion as to the cost of purchase or reproduction in 1946 of the items of shop machinery and equipment contained on the various lists submitted to you?

A. I have.

Q. And what is the total cost of those items?

(Testimony of John Michael Burlake.)

A. The total cost as of 1946, the sum of \$20,519.

Q. And have you computed the cost of the same items as of 1952? A. Yes, I have.

Q. What is the cost of those items in [1221] 1952? A. The sum of \$35,385.

Mr. Cranston: Your Honor, at this time I would offer in evidence the report, which has previously been marked for identification, excluding from the offer the summary production sheet, which is marked sheet 3, which compares cost of reproduction new in 1946 with cost of reproduction new in 1953, and excluding from the cost of reproduction sheet 3-A the line which is numbered 6—Miscellaneous Improvements; the line which is numbered 16—Farm Machinery and Equipment; the line which is numbered 18—Automobiles and Automobile Trucks, and excepting the totals which would have to be changed because of the elimination of the three items referred to, and also excepting from the offer page 23 and page 23-A, dealing with miscellaneous improvements, and pages 33, 34, 35 and 35-A, dealing with farm machinery and equipment, and pages 36 and 36-A, dealing with automobiles and trucks. With those exceptions I offer the report in its entirety in evidence.

Mr. Abbott: Your Honor, we appreciate the fact that expert witnesses, who have done a thorough job in investigating the matters which are the subject of the inquiry, need the report to assist them in testifying, but we know of no precedent for

(Testimony of John Michael Burlake.)

receiving the report in evidence, and will object to it as hearsay, and as irrelevant and immaterial.

Mr. Cranston: Your Honor, I can ask the witness every [1222] question that is contained in here, and put it all in the record, but I see no reason to do that.

The Court: I don't think so. I think the same rule is applicable that was well stated by the Court of Appeals some years ago in this Circuit in *United States v. Wells*. It is just simply a time-consuming matter in the courts, where an auditor, or an appraiser, or someone in those categories, is required to minutely and in detail take up the time, when it is all chronicled and epitomized and arranged clerically in a document.

Now, if there is any question about any of these at all, you can cross-examine on them, but to require the court to sit here and listen to a narrative of these items is simply out of the question.

Mr. Abbott: That was not the government's intention, your Honor. The witness had testified to his conclusions, and these things are simply the building blocks upon which those conclusions have been achieved.

The Court: You can cross-examine on them, if it is before you, if the document is here. That is the point. The point is to save time. That does not mean that by saving time the court adopts the statements that are the supporting elements to the conclusions that were given. That does not preclude you from cross-examining upon all of these items

(Testimony of John Michael Burlake.)

that are contained in these various pages that have been mentioned. [1223] But it is certainly in the interests of the economy of time, in which we are all interested, and, particularly, in view of the decision of the Ninth Circuit in that case. There may be others since that time, but I know of that one specifically. The objection will be overruled.

The Clerk: Mr. Cranston, is that Plaintiff's Exhibit 50 that you are referring to?

Mr. Cranston: I believe it is. The court has the original document, with the number on it.

The Clerk: That is No. 50 into evidence, with exceptions.

(The exhibit referred to was received in evidence and marked Plaintiff's Exhibit No. 50.)

Q. (By Mr. Cranston): Mr. Burlake, the figures which are contained in the portion of the report which has been introduced in evidence represent your opinion as to the items set forth in each case as to those specific figures—— A. They do.

Q. ——as to the cost in 1946 and in 1952?

A. They do.

The Court: Let me understand that a little more specifically, Mr. Burlake. Do these items that are contained in these pages merely contain your opinion as to the figures and amounts that are set forth therein?

The Witness: Well, your Honor, they contain—so far as [1224] we have gone, they contain my opinion, so far as an opinion may go, which is all

(Testimony of John Michael Burlake.)

the way to being the most precise type of an estimate permissible or available, based upon the data at hand.

I do not mean by that that they are merely an expressed opinion, but that they are the result of deliberations in the processing of all the available data and the exercise of the best judgment to obtain as precise as possible an estimate of something which has not yet transpired, and, therefore, cannot be recorded as an accounting fact.

The Court: For instance, let's take the item of domestic water system. Now, generally—I am not asking you specifically, because that is the very matter that the court has just discussed—in your opinion that you have expressed here as to the reproduction cost, do you limit that to physical factors, which include labor, or do you merge into it some deduction that you make yourself, regardless of the figures that are contained in these various pages?

The Witness: It is a little difficult for me to follow the question, but, if I understand it, the figures include consideration of the materials, the labor, the necessary overheads that would be involved in the reproduction or a production of the described property items, in the form in which they are described, as of the date that the opinion proposed to relate to, if those items were constructed under contract [1225] with a reputable contractor for that type of construction work.

(Testimony of John Michael Burlake.)

The Court: Those that you have enumerated are all physical factors.

The Witness: They are all physical factors. Overheads are physical factors. Profit is a physical factor, and is reflected in the property that is in existence. They do not include indirect costs of construction, such as taxes, or interest on moneys, or such things as that, but only those elements of cost that have gone into produce the property in question.

The Court: I see. Now, is there a question pending?

The Reporter: No, your Honor.

Mr. Cranston: You may cross-examine.

Cross-Examination

By Mr. Abbott:

Q. With respect to the farm-type structures which you appraised, did you make any study with respect to their economic feasibility?

A. No, we did not make a study of their economic feasibility, because we processed the data that was handed to us in the way of specifications. In other words, we appraised the intended structures without questioning, except in cases where it was obvious to casual inspection that there might be reasonable question, and that type of questioning was taken up [1226] with Mr. Sutro in conversation.

Q. Did you, in appraising any particular farming installation, form an opinion as to whether or

(Testimony of John Michael Burlake.)

not it was a reasonable installation for a profit-making enterprise?

A. Do you refer to this specific instance, or in other appraisals that I have made?

Q. This specific instance?

A. No, I did not.

Q. Did you form an opinion as to the useful life of each of the structures, the increased cost of construction of which you have appraised?

A. I might have, but it in nowise shows up in the results of my work, since they are of a specific moment.

Q. Calling your attention first to the six buildings, do they all have the same or substantially the same useful life?

A. I wouldn't necessarily say that they do have the same useful life, nor even that it would be substantially the same.

Q. Then starting with the implement shed, what is your estimate of its useful life?

A. I haven't specifically studied the implement shed, and I would not be able to answer at this time.

Q. Did you review the data prepared by your assistant with respect to the implement shed? [1227]

A. I did.

Q. And was that data sufficient to form an opinion as to its useful life? A. No, sir.

Q. Did that data include the building materials, and the type of construction, and the type of flooring?

(Testimony of John Michael Burlake.)

A. It did, but it did not include the conditions under which that life was to be expended.

Q. Assume a structure having the characteristics of the implement shed, as you appraised it, and further assume it will be used to store farm implements. With that additional assumption, can you express an opinion as to its useful life?

A. After some study, I would be able to do so, but not necessarily based upon those limitations either. The expression of an opinion on useful life requires a considerable study of diverse factors.

Q. What factors are not included in the question as propounded?

A. You haven't mentioned, for example, the type of tools. You haven't mentioned—you haven't considered, or given for me to consider, the type of weather that would prevail over the next 20 to 30, to 40 years.

Q. Do you ever, in forming an opinion as to useful life, know what the future weather is going to be, sir? [1228]

A. Insofar as the available records from the past would indicate it, and only so far do we know.

Q. With respect to each of the five other buildings, would your answers be the same to the questions I have last propounded relative to useful life?

A. Substantially, in that I would not venture an opinion without a detailed study.

Q. Now, with the exception of the residence, did you have actual plans on any of these six structures?

(Testimony of John Michael Burlake.)

A. Would you elucidate what you mean by plans, actual?

Q. Well, the drawings you have used are known in the profession as preliminary sketches, are they not, sir?

A. They might be. I would not go so far as to say that they are preliminary sketches, in that the plans, as I know them, went into considerable detail in outlining and specifying the sizes and locations of members of framing, which certainly is not in the nature of a preliminary sketch or plan.

Q. Do all of those plans contain sufficient data for a contractor to erect the buildings?

A. I would say that would depend upon the closeness of the supervision that the owner or his agent, such as an architect, would exercise over him.

Q. Did you obtain additional information not appearing on the drawings from Mr. Sutro?

A. There might have been some minor items. There were [1229] explanations. There were discussions of some things. Yes, I did obtain some additional information.

Q. He mentioned what materials he intended in certain places, did he not? A. He did.

Q. And what type of construction was contemplated where only a floor plan appeared in a particular drawing? A. Yes, he did.

Q. And he gave you the types of piping to be used in the irrigation system? A. Yes, he did.

Q. Did he give you specifications for the dam that was a part of the irrigation system?

(Testimony of John Michael Burlake.)

A. He gave me the calculated quantity of earth-work, and such data as had been developed for him by the Conservation engineers.

Q. Do you know the date that that information was prepared for Mr. Sutro? A. No, I don't.

Q. Were you presented with a Conservation engineer's report, or only Mr. Sutro's analysis or explanation of it?

A. I have seen data presented to me by Mr. Sutro, which purported to be reports and computations by Conservation engineers, but I don't know, to my own definite knowledge, that it necessarily was. I had to accept certain things as being [1230] what they purported to be.

Q. Well, did that document have a date on it?

A. I believe it did, but I don't recall what it was. My recollection is that it did.

Q. Do you recall whether or not it was approximately a current date?

A. No, I don't recall that it was a current date, if you mean within the last week or two, or month, or year.

Q. Within the last year.

A. As I recall it, it antedated the last year.

Q. Was it a date in the 1940s, or do you recall?

A. I think it was about 1940 something; late 1940s.

Q. Now, in preparing this analysis, did you consider building costs—or, correction—labor costs in the area in which the structures would be erected?

A. Yes, I did.

(Testimony of John Michael Burlake.)

Q. And did you assume that the labor was being employed on a straight-time basis?

A. I did.

Q. Did you investigate into the facts relative to labor availability in San Diego County in the year 1946?

A. At this particular time we did not, but we did have it over the years. We keep current with those factors, and they are on record in our office files.

Q. Did you consult those records in the preparation of [1231] this report?

A. Yes, I did, as a matter of normal checking procedures.

Q. And did those records show, that in order to secure labor in the year 1946 in San Diego County, a very substantial amount of overtime had to be provided for the employees?

A. No, they don't show that.

Q. Well, is that the fact?

A. I don't know that it is the fact.

Q. Are you personally——

A. I don't recall, in other words, that I have ever seen it as a matter of record attested to by an authority on it.

Q. Would you have a personal recollection of the labor supply situation in the year 1946 in Southern California?

A. Not a very clear one. At that time I was located in Northern California.

Q. Have you received information from any

(Testimony of John Michael Burlake.)

source to the effect that in the year 1946 throughout Southern California it was necessary to provide a substantial amount of overtime in order to secure labor?

A. I have talked to numerous people, and I have heard their say about it, but I cannot vouch for the facts, as to what they might be, because I have never personally myself employed labor in that form.

Q. Yes, I understand, sir. Were those numerous people [1232] employed in the building industry?

A. Some of them were. Some of them weren't.

Q. Calling your attention for the moment to those who were employed in the building industry, did some of them tell you that in the year 1946 a substantial amount of overtime had to be provided in order to secure employees in the buildings trades?

A. I don't recall the precise matters that they may have conveyed to me.

Q. Well, was that general thought conveyed?

A. It might have been, but I cannot vouch for it, because I have made no precise records of these things, and they would be only hearsay, in my opinion, in any case.

Q. Well, you understand, sir, that as an expert witness, you are entitled to summarize hearsay evidence that comes to your attention, especially when it comes from people who have knowledge on the subject.

A. That is true.

Q. Now, my question is directed to the hearsay

(Testimony of John Michael Burlake.)

information you received from people in the building trades. You have already testified you had no personal knowledge. I am asking you what you heard.

A. And I have told you why I can't quote what I have already heard. I can give you general impressions of what my recollection may be, however, and I will go as far as you like, [1233] but they will not pertain to this report, because it is qualified otherwise, if you have read it.

Q. To which qualification do you refer?

A. I refer to the qualification that we have not considered overtime, or premiums, or bonuses for labor, those matters which are difficult to ascertain and prove.

Q. Well, your testimony has been to the same effect?

A. That's right.

Q. I think that is understood. But we are now testing the assumptions upon which the report is based.

A. Naturally, under the circumstances, I have not given a great deal of time to a study of the facet that I have not intended to use in my particular preparation.

Q. We understand that you did not so assume in preparing the report. But this question is: What is the general impression that you have gained from talking with people in the industry relative to the necessity for paying overtime in order to secure labor in the building trades in the year 1946?

A. I would say that I have heard that it is a custom and a practical necessity that still exists

(Testimony of John Michael Burlake.)

today, and existed at that time, but as to the comparable degree, I am not competent to state an opinion.

Q. Your sources within the industry did indicate that it was a practical necessity in the year 1946?

A. Just as in certain trades it is today a practical [1234] necessity, that a good man will demand and receive a wage higher, but I cannot tell you how much higher, because I don't know.

Q. Well, isn't it a fact that today in the building trades overtime employment is at a minimum?

Mr. Cranston: If the court please, I will object to considering conditions today. We are limited by the court's ruling.

Mr. Abbott: The objection is well taken. I will amend my question.

Q. (By Mr. Abbott): Isn't it a fact that in July of 1952, overtime employment within the building trades was at a minimum by comparison with conditions over the 10 years preceding that date?

A. I won't hold myself qualified to answer that question yes or no. There have been periods in that interim when construction was at a reasonably low ebb, and whether it was lower than now and whether the conditions were worse or better than they are in 1952 or in 1953, I am not qualified to say.

Q. Well, in all respects, sir, your qualifications are so excellent that I would assume that this would be a factor which would come to your attention.

(Testimony of John Michael Burlake.)

A. I agree that it is a factor which comes to my attention, but I am trying to say that I cannot pin it down as being a fact, or even a close fact, a semblance to a fact. [1235]

Q. Did you interview any contractors in the Oceanside or northern San Diego County area to ascertain whether or not, in their opinion, there was a measurable, or at least an approximately predictable increment in building costs in 1946, attributable to the necessity for employing overtime labor?

A. No, I did not.

Q. Can you tell me, sir, where I can find in the exhibits which were made available to you in connection with your study, the plans of the domestic water supply system?

A. Where you may find that in the exhibits? I don't know the name of the exhibit, but there is one plan showing an outline of what I referred to as the domestic water supply system, including the orchard irrigation system and necessary drain lines in connection therewith.

Mr. Cranston: Is this the document to which you refer?

(Handing document to witness.)

The Witness: This is it.

The Court: What is that?

Mr. Abbott: The witness is now viewing Plaintiff's Exhibit 44-N.

Q. (By Mr. Abbott): On page 24 of your report various items appear. One is a 10,000 gallon

(Testimony of John Michael Burlake.)

capacity wood stave open top elevated water tank. Would you point that out on the chart to me?

A. It is indicated to be there [1236] (indicating).

Mr. Abbott: The witness has now pointed to a circle close to the right-hand edge of the chart with the number and symbol "90" and a degree within.

Q. (By Mr. Abbott): Will you please explain to me how you ascertained that that was a 10,000-gallon capacity wood stave open top elevated water tank, two-inch staves and bottom, 3-inch by 10-inch chine joists, etc., as appears in the first item on page 24?

A. That was based upon questioning Mr. Sutro as to the size of the tank, and observation of the tank when I was on the premises.

Q. Is that tank presently in place?

A. To the best of my knowledge, it is. I haven't been on the premises since November 9th.

Q. Did you ascertain when it had been purchased? A. No, I did not.

Q. This report contains considerable detail with respect to the irrigation system, which, so far as I have been able to ascertain, does not appear on the chart of that system in the record. Will you explain where that detail was secured?

A. I would be glad to, if you will mention any specific item. Otherwise, I would probably ramble on at great length.

Q. Well, just in general, are these detailed specifications for the irrigation works, commencing at

(Testimony of John Michael Burlake.)

page 25 of the [1237] report, specifications secured by interview with Mr. Sutro and not from the charts in evidence?

A. I believe they were generally, as my recollection is, they were generally obtained from the charts that are in evidence on record, and from an understanding of what symbols appearing on the chart might mean; very limited questioning of Mr. Sutro on such matters as piping, because it is quite evident, but also upon a communication of Mr. Sutro's more extended specifications, which I have in letter form.

Q. Mr. Sutro sent you a letter with the specifications?

A. He did, because we put those things on record, to save me a lot of trouble in copying the results.

Q. And that letter contained a lot of data that does not appear in the plans, did it not?

A. It contains a lot of explanatory data, and supplementary data in some degree, and repeats material that was on the plans. For example, my recollection is amounts of excavations for a reservoir appear on certain plans in evidence, to my knowledge, but they are also repeated in the letter.

Q. But there are numerous other items in the letter which do not appear on the plans, are there not?

A. Not necessarily numerous. There are numerous items that do not appear in the letter that are on the plans. We used the sum total of the data

(Testimony of John Michael Burlake.)

that we had, one complementing the other. [1238]

Q. Yes, sir. Now, on page 27 of your report, under the head, "Irrigation Works," the second item is 3,425 linear feet of 8-inch diameter 10 gauge steel pipe, which in 1952 you appraised as having a cost of—I don't find a 1952 appraisal. I find a 1953 appraisal of \$9,590. But this question is not directed to the figure. Will you tell where you got the specifications for 10 gauge steel pipe?

A. From Mr. Sutro.

Q. On page 32-B of your report, under the head, "Shop Machinery and Equipment," I find the item 5 buried tanks, 1952, cost \$3,150. Where on the charts in evidence do those 5 buried tanks appear?

A. It is my recollection that they appear on—I am looking at five of them right here, on this particular chart we were just examining.

Q. What type of tanks are those?

A. Buried steel tanks.

Q. For what purpose?

A. For purposes of Diesel oil, fuel oil, and gasoline.

Q. I am pointing now to three of the tanks. These are the other two up in the left-hand corner?

A. That is right.

Mr. Abbott: I have no further questions at this time, your Honor. [1239]

(Testimony of John Michael Burlake.)

Redirect Examination

By Mr. Cranston:

Q. Mr. Burlake, you were asked whether you had formed an opinion as to whether any of the buildings, or the total of the buildings and the equipment you testified to were from an economic basis. Are you familiar with repair shops on farms which have equipment similar to that referred to in the list of equipment contained in this inventory?

A. Relatively so; familiar with it by association in other appraisals I have made of other ranch properties.

Q. Have you found other ranch enterprises in which equipment of this type was used?

A. Yes, I have.

Q. Would you say that equipment of this type is used in farming operations in California?

A. It is not necessarily used, I would say, on all farms of either this particular type or this particular size, but some, if not all, forms of equipment herein listed and inventoried and valued will be found on ranches and farms, depending upon the amount of repair work that they must do, and the circumstances under which available repair facilities are located.

Q. You have not considered the nature or relative amount of equipment in any of these cases?

A. No, I have not, beyond the point that I note there [1240] are few duplications, and the minimum

(Testimony of John Michael Burlake.)

amount of any piece of equipment to do a specific job would be one.

Q. Now, you referred to certain information which Mr. Sutro gave you, which purported to come from the Soil Conservation Service. I refer you to a document marked Plaintiff's Exhibit 40, and ask you if this is the document to which you referred?

A. This I recognize to be one of the documents that Mr. Sutro made available to me.

Q. And does that appear to be the date to which you referred?

A. Well, I see that date on it. That is the date that I recall having been on it, but as to when that date was put on, of course, I don't know. That is in ink, and the rest of it is in pencil. I wouldn't testify as to what the age of that document might be.

Q. But that is a document——

A. But that is the document, as I recall it, and the figures that I was trying to recall with as much precision as possible.

Mr. Cranston: If the court will pardon me, I am endeavoring to find one of the exhibits.

Q. (By Mr. Cranston): You were asked concerning a certain item of 8-inch steel pipe, which appears, I believe, on page 27 of your report. I will ask you if that pipe appears [1241] on Plaintiff's Exhibit 38?

A. It does, as a brown line or an orange colored line; I would say a brown line.

Q. You testified that on certain occasions you discussed various matters with Mr. Sutro in re-

(Testimony of John Michael Burlake.)

gard to the type of construction. Did you follow out Mr. Sutro's instructions in those matters, or did you ask him for information, and then proceed with your own appraisal?

A. It depended upon the particular circumstances. I recall one particular instance where, with regard to the implement shed, Mr. Sutro gave his intention as having been to construct a set of doors in the full wall on both sides of the building, when the drawings only definitely showed four sliding doors to be on one side, and regardless of the fact that the building was so framed that another set of doors could be located on the other side, and Mr. Sutro's evidencing an intention by word of mouth, we did not go along with him, and we stuck to the drawings in that case.

Q. Now, you were asked concerning a 10,000-gallon water tank which appears on one of the pages in your report, on page 24. Do I understand that you observed a tank in place on Mr. Sutro's property?

A. I did. There was a tank there on November 9th.

Q. And are the specifications set forth in here in accordance with the tank actually in [1242] existence?

A. They are, as substantially in accordance with the tank as existed, except it does not have a roof on it to this date, to my knowledge, whereas my specifications call for a roof. There is a case where Mr. Sutro's intention to put a roof on was con-

(Testimony of John Michael Burlake.)

sidered to be reasonable. A water supply tank should be covered.

Q. Do I understand it to be your opinion, Mr. Burlake, that the matter of overtime at any particular time is too indefinite to be considered in making an appraisal?

A. I would say that it is, unless a definitely planned study is made to ascertain conditions that normally are under cover, to a large extent, and very variable from one job to another, and can't be considered as normal.

Q. Does your office have in its possession labor records and wage scales for Southern California in general, and for San Diego County in particular?

A. Yes, we do.

Q. And these cover the period from 1946 through 1952, as well as other periods?

A. They do, as well as other periods.

Q. Those scales are obtained and derived by you from all reputable sources known to you?

A. They are from the most reputable sources we know.

Q. And in making this report, did you use the figures which are set forth in this [1243] information? A. Yes, we did.

Q. And that figure would make allowance for all items which were statistically proper to be included, is that correct, in your opinion?

Mr. Abbott: I will object to that as being far too general. If the question is: Does it include overtime, I have no objection to it.

(Testimony of John Michael Burlake.)

The Court: It seems to be quite a comprehensive question, Mr. Cranston.

Mr. Cranston: I will reframe the question.

Q. (By Mr. Cranston): In preparing your report, and in determining costs, did you take into consideration all factors which in your opinion could be gauged with any accuracy? A. We did.

Q. I believe you testified to certain work in connection with dams and reservoirs, and estimates made by you. Referring again to Plaintiff's Exhibit 38, did you find information on this exhibit which was of assistance to you in that connection?

A. With regard to dams and reservoirs, yes, there was some information that was available from these plans, but, generally, it was expanded by other drawings available on reservoirs. This might be outlining of a reservoir on this plan. There were more detailed drawings available.

Q. Those I believe are these two documents, Exhibits [1244] 48 and 48-A; is that correct?

A. 48 and 48-A; yes.

Mr. Cranston: That is all.

Recross-Examination

By Mr. Abbott:

Q. You testified to having some familiarity with equipment used on other ranches in the general area of the Sutro ranch. Will you name three ranches within a 50-mile radius of that ranch which have 17 pieces of electric-powered equipment and one piece of gas-powered equipment on them?

(Testimony of John Michael Burlake.)

A. May I ask to have my reply to your inferred question read to me?

Mr. Cranston: I do not believe the witness testified to how Mr. Abbott has stated.

The Witness: I do not recall testifying to knowing any given ranch in Mr. Sutro's area other than his own.

Q. (By Mr. Abbott): You have testified to a general familiarity with farm equipment, have you not? A. That is right.

Q. Have you acquired that familiarity from inspecting or visiting farms and ranches?

A. Yes; not from being a rancher.

Q. Yes. Now, from those inspections and visits, can you recall one ranch within a 50-mile radius of the Sutro ranch which has 17 pieces of electric-powered shop equipment [1245] and one piece of gasoline-powered shop equipment?

A. I can't recall one ranch within a 50-mile radius.

Q. In what area——

A. Why do you limit it to a 50-mile radius, when my experience isn't that small?

Q. I won't. In what area were these ranches and farms that you visited?

A. I think of one offhand in Arizona. I think of two in Arizona. I think of two in Northern California that had at least an equal amount. But, as you recall, I explained my opinion that the actual amount of equipment you would find on a given ranch would depend upon local circumstances, and

(Testimony of John Michael Burlake.)

somewhat the owner's anticipation of his needs and his wishes as to how to handle them.

Q. In other words, the owner's own personal wants is what you considered when you answered that question?

A. Partly. His wants, and his estimation of the best way to provide for them.

Q. Now, you have appraised ranch and farm type buildings in the Southern California area, have you not? A. Yes, I have.

Q. Have you on any ranch under 500 acres found a structure to house equipment consisting, in part, of 17 electric-powered operated devices and one gas-powered operating device?

A. I don't recall any. [1246]

Q. Do you know of any ranch in the Southern California area under 500 acres which has a crane?

A. It would partly depend upon the definition of a crane. If you speak of a crane substantially the duplicate of the crane that Mr. Sutro's ranch is proposed to be equipped with, I would say no, but there are many modifications of the form of crane, and——

Q. Do you know of any ranch in the Southern California area with less than 150 irrigable acres, or tillable acres—that should be just tillable acres—which have 7,000 or more square feet of area under roof and floored for agricultural buildings?

A. It would be difficult for me to say.

Q. Do you know of any ranches twice that size which have such facilities?

(Testimony of John Michael Burlake.)

A. Located in Southern California, or Northern California, or where?

Q. Yes, in Southern California.

A. No, I don't, but in Northern California I do.

Q. Now, isn't it true, sir, that the Bureau of Labor Statistics of the United States Department of Labor publishes a detailed report of labor earnings every week, and that that report contains in part an analysis of overtime earnings?

A. I don't know that.

Q. Well, isn't it true that such a report is available, [1247] and further contains that data broken down on an area and locality basis?

A. I don't know that.

Q. Do the labor costs indices in your office consist wholly of straight-time labor costs?

A. The labor cost indices in our office, so far as I know, do consist wholly of straight time. That is the form in which we publish any indices that we do publish.

Q. So that the data or records to which you alluded in answer to Mr. Cranston's questions are data and records relating to straight time labor rates, are they not?

A. Now, you are speaking of data rather than indices, and we are speaking of something which is on record, and which we know about—the overtime rates that do prevail. So that I would say in my answer that I was alluding to and was cognizant of overtime rates, in my answer to Mr. Cranston's

(Testimony of John Michael Burlake.)

question, as I remember it, although, insofar as we did not contemplate any specific, other than the normal overtime that certain trades must perform in the normal erection of an improvement, simply because they must follow upon other trades which, if they quit at 5:00 o'clock, someone must work until 5:30 or maybe 6:00. Other than that, we have not considered the overtime rates to be applicable in compiling our report.

Q. Do contractors in the Southern California area, in bidding for construction work, predicate their bids in part [1248] upon the necessity or absence of necessity for employing labor on an overtime basis?

A. I would say that would depend entirely upon the particular conditions, as well as the general conditions.

Q. Well, in the year 1946 were contractors following that practice? A. I don't know.

Q. Did you make any effort to ascertain the factors upon which contractors based their bids in the year 1946?

A. With reference to this particular job?

Q. With reference to this particular investigation.

A. Or investigation. I did not make a specific investigation in that direction, beyond what I already knew would be the practice at that time. I tried to have a home built at that time. I knew what the practice was in that respect.

Q. You knew what the practice was in 1946 with

(Testimony of John Michael Burlake.)

respect to the inclusion of an element for overtime compensation in bids?

A. I would say not. I knew of the practice that would exist, that the work would be done on a materials plus cost and overheads basis; cost of materials, labor, and overhead basis, generally.

Q. A so-called cost-plus method?

A. Or estimate. It was admittedly difficult, if not impossible, to get a flat bid at that time. [1249]

Q. And that was because of the difficulties in securing labor on a straight-time basis, in part, was it not?

A. That I don't know about. I don't know why it was, but it was, as I found out.

Q. But, in any event, you didn't find it necessary in order to fix and achieve the opinion which you have expressed here to inquire into the factors which motivated contractors in preparing their bids in San Diego County in the year 1946?

A. Not beyond the knowledge I already had.

Q. And the knowledge you already had is the knowledge you have just stated in answer to the preceding question?

A. As to the general—yes, as to the general situation.

Mr. Abbott: No further questions.

(Testimony of John Michael Burlake.)

Redirect Examination

By Mr. Cranston:

Q. Mr. Burlake, do your records show on any particular item the total percentage of that item attributable to labor, that is, do your records, say, with regard to the buildings show the breakdown between labor and materials, or are they broken down on some other basis?

A. They don't show the breakdown in total. They do indicate the proportionate parts of the unit costs, which are labor and which are material in most cases, however, insofar as it applies to a particular element of construction. [1250]

Q. And that labor cost on any particular unit would, of course, vary widely depending on what the unit is? A. Yes, it would.

Q. Is it possible for you to give any general estimate, then, as to the portion of any one of your figures which would represent the labor cost computed by you, and what cost would represent material or other items?

A. May I have that question again?

(Question read.)

A. That is a little too involved to answer directly, because you referred to both general and specific by "any one." If you could restate the question, I believe I could do better.

Q. I will rephrase the question: Take, for example, a specific building such as the implement

(Testimony of John Michael Burlake.)

shed. Would your figures show the amount involved in labor in that building, and the amount of the total price which would represent costs other than labor?

A. Not directly. It would have to be done as a matter of analysis, to draw the figure.

Mr. Cranston: That is all.

Mr. Abbott: I have nothing further, your Honor.

The Court: That is all.

(Witness excused.) [1251]

Mr. Cranston: If the court please, at this time I would like to submit to the court a very brief second supplemental complaint, to bring our allegations as to damages down to the date of this hearing. There was some contention made at one of the previous hearings that a complaint could go only to the date as of which it was filed. Inasmuch as we have regarded this as a continuing trespass here, we are asking leave to file this amended complaint, which consists of just two paragraphs.

Mr. Abbott: May we have an opportunity to read it prior to the court's ruling?

The Court: Yes.

Mr. Abbott: Is this \$150,000 prayer in addition to the \$650,000 odd total in the pleadings filed to date?

Mr. Cranston: Mr. Abbott, the total in the previous complaints I do not believe total \$650,000, unless you would include the accruing damages.

Now this, I take it, would include, or would be included within the accruing damages, although I

don't know that it makes any particular difference whether we add it on or whether they run consecutively or concurrently, so to speak. The court will award whatever damages it sees fit, regardless of the prayer.

Mr. Abbott: This would be in lieu of the \$375—is it \$275 or \$375 per diem rate, or in addition to it? [1252]

Mr. Cranston: No, this would be in lieu of it.

The Court: Is there any objection to it, gentlemen?

Mr. Abbott: No objection to it, your Honor.

The Court: It will be filed.

Mr. Cranston: If the court please, for the purpose of the record, I would like to offer at this time to prove by the witness who has just been on the stand the 1953 costs for the various items as set forth in his report, the portions of the report which have not actually been introduced in evidence, but which were identified, and for the same purpose I would offer in evidence the documents, Exhibits 44-O, 46-A, and 47, consisting of the list of farm tools, the list of the pumping equipment, and the fencing map, which were identified by Mr. Sutro yesterday, but which were not admitted in evidence at that time.

The Court: I think the rulings will stand. That means that the offer will not be received.

Mr. Abbott: So that the record may show, the government renews the objections previously tendered to that offer.

The Court: And they are sustained.

Mr. Cranston: I would also at this time offer in evidence the additional lines and the portions of Plaintiff's Exhibit 50, which were excluded from the previous offer, that is, the lines in which the opinions of Mr. Burlake as to farm machinery, miscellaneous improvements, and automobiles [1253] and trucks are set forth.

Mr. Abbott: We object to the offer of proof on the ground that it is irrelevant and immaterial, and does not fix any proper item of damage awardable under the Tort Claims Act.

The Court: Objection sustained.

Mr. Cranston: The plaintiff will rest, your Honor.

The Court: You have your witnesses here, have you, Mr. Abbott, to go forward now?

Mr. Abbott: Yes, your Honor, we have. We are prepared to go forward.

The Court: We will take a recess for about five or ten minutes.

(A short recess.)

Mr. Weymann: Mr. Goode, will you come forward?

STANLEY E. GOODE, JR.

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Stanley E. Goode, Jr.,

Mr. Cranston: Mr. Weymann, may I interrupt just a moment?

Mr. Weymann: Yes. [1254]

Mr. Cranston: Your Honor, I notice that in my offer in evidence of portions of Exhibit 50, I inadvertently included in the part which was offered and accepted the line No. 12 of the summary, irrigation pumps. I presume that in view of your Honor's rulings, that line should also have been excluded from the offer in evidence.

The Court: It will be so ordered.

Direct Examination

By Mr. Weymann:

Q. Mr. Goode, where do you reside?

A. In Santa Ana.

Q. How long have you resided there?

A. I have lived there all my life. I was born in Santa Ana.

Q. What is your occupation?

A. I am a real estate appraiser.

Q. How long have you been engaged in that profession? A. Since 1940.

Q. Since 1940. Are you a member of the firm of Goode & Goode—— A. Yes, sir.

Q. ——Real Estate Appraisers?

(Testimony of Stanley E. Goode, Jr.)

A. Yes, sir, I am.

Q. And how long has that firm been established?

A. Well, I am in partnership with my father, who has been an appraiser in Orange County for, I will say, approximately 40 years, and it has been a partnership since 1940. [1255]

Q. Do you hold a membership in any professional organizations? A. Yes, I do.

Q. What are those organizations?

A. I am a member of the American Institute of Real Estate Appraisers, a member of the American Right-of-Way Association, the Institute of Farm Brokers. I am a member of the Santa Ana Board of Realtors, and thereby hold membership in the California Real Estate Association and National Association of Real Estate Boards.

Q. You have mentioned the American Institute of Real Estate Appraisers. What is that organization?

A. It is an organization of professional men, whose entire time is devoted to the appraising of real estate, and the purpose of it is to limit membership to men with qualifications, who pass examinations and who meet standards set up by this group itself.

Q. Does that organization have a code of professional ethics? A. Yes, it does.

Q. What experience have you had in connection with your association with that organization in the form of lecturing or speaking?

A. I lectured in 1950 at the Southwest Regional

(Testimony of Stanley E. Goode, Jr.)

Conference of the American Institute of Appraisers here in Los [1256] Angeles, and at the same time was a member of a panel of speakers during sessions where questions were asked. That is an educational type of meeting.

I performed the same function in 1951 or '52 in Houston, Texas, at the South Central Regional Educational Meeting of the American Institute.

I lectured for key study courses 1 and 2, given by the American Institute of Appraisers at the University of California at Davis during 1953, a course put on by the American Institute of Appraisers in conjunction with the staff of the University of California at Davis, and in conjunction with the professors there at Davis. [1257]

Q. And is Davis the branch where the Agricultural Experimental Station is located?

A. Yes, it is.

Q. I don't believe you gave us your educational background. Will you give us that, Mr. Goode?

A. I attended schools through high school in Santa Ana. I attended Stanford University for four years. I attended school, that is, night school, at the University of Southern California, studying appraisal, during 1940 and '41.

Q. What did you major in at Stanford?

A. My major was economics.

Q. Have you been employed by any governmental agencies to make appraisals?

A. Yes, I have. I have been employed by the War Department, the Army, and by the United

(Testimony of Stanley E. Goode, Jr.)

States Navy, by the State of California Division of Highways, and the United States Bureau of Reclamation, the Veterans Administration, the Alien Property Custodian's office, the Department of Finance of the State of California, the Veterans Welfare Board of the State, of the 32nd Agricultural District of the state.

Q. Have you finished? A. Yes.

Q. Now, with reference to your employment in connection with these governmental agencies, have you represented [1258] property owners in any litigation with any of these governmental agencies?

A. Yes, I have.

Q. Would you say that your representation of the landowners or the representation of the governmental agencies was the predominant employment?

A. I would say that I represented more property owners numerically and volumewise than I do government agencies.

Q. Have you ever been appointed as appraiser or referee in any courts of the state of California or the Federal courts?

A. Not in the Federal courts. I have in the Superior Courts a number of times.

Q. Will you state, please, some of the private corporations or other clients by whom you have been employed as an appraiser?

A. I was a staff appraiser, and still partially hold that position with the First National Bank in Santa Ana, and have appraised for the other local banks there, the Commercial Bank, and some of the

(Testimony of Stanley E. Goode, Jr.)

other lending institutions, the Orange County Teachers' Credit Union and the Commercial National Bank, on more or less a perennial basis whereby I am working for them on a number of assignments during the years. I have appraised for the Citizens National Bank in Riverside. I have appraised—was staff appraiser for the First [1259] National Bank in connection with the Santa Ana Mortgage and Investment Company properties.

Q. By the way, that Santa Ana Mortgage and Investment Company, I believe there has been testimony here that they owned the subject property at one time? A. That is correct.

Q. Proceed, then, Mr. Goode.

A. Other organizations that I have worked for are the First Trust & Savings Bank of Pasadena; the West Coast Life Insurance Company; the Ford Estate of New York; the National Guaranty Life Insurance Company; the MacMillan Petroleum Company; the First National Bank of Beverly Hills; the Irvine Company of West Virginia, and that is an Orange County organization.

Q. Is the Irvine Company of West Virginia the fee owner of the Irvine property in Orange County?

A. Yes, sir; that is correct.

Q. Which comprises how many acres, about?

A. Approximately 93,000 acres at the present time. The Irvine Foundation and the Irvine Company have an ownership combined on that ranch.

Q. All right. Any others that you wish to men-

(Testimony of Stanley E. Goode, Jr.)

tion?

A. The Connecticut Mutual Life Insurance Company; the General Petroleum Company; the Rexall Drug Company; Southern Counties Gas Company; Southern California Edison Company; [1260] Union Oil Company; Orange County Title Company; Abstract and Title Guaranty Company; Title Insurance and Trust Company; Pacific Electric Railroad; Holley Sugar; Famous Department Stores; the Crocker Bank in San Francisco; Pomona College, that, is for the board of trustees of Pomona College; the board of trustees of the University of California; the Dominguez Estate, and the Carson Estates Company.

Q. What properties did you appraise for the Dominguez Estates Company?

A. Properties they owned in the San Clemente district of Orange County, right adjacent to the north boundary of Camp Pendleton.

Q. Did you ever appraise property where the buyer and the seller agreed in advance to consummate sales based upon your opinion of value?

A. Yes, sir, I have.

Q. In what instance did you do that?

A. I am currently making an estimate of the fair market value on approximately 300 acres of land on the Irvine Ranch for that purpose, wherein the board of trustees of the University of California and the Irvine Foundation and the management of the Irvine Ranch Company have agreed in advance to transfer the property, buy and sell, respectively.

(Testimony of Stanley E. Goode, Jr.)

at whatever the estimate is, and I am receiving my instructions jointly from both parties. [1261]

Q. And have you appraised agricultural property for the purpose of estimating its rental value?

A. Yes, I have.

Q. Will you state, briefly, some of the properties that you have appraised?

A. This last year, that is, during 1953 and a portion of late '52, I appraised the entire holdings of the Fred Bixby ownership in connection with his estate, and it involved approximately 25,000 acres of land. And the problem involved was one of computing the fair market value of shares of stock, ultimately, and in that connection it was necessary to not only estimate the fair market value of the property, but also the rental value of the property, so that each parcel that was appraised was appraised with that dual purpose in mind.

Q. Did that appraisal include the appraisal of the buildings and the improvements on that property?

A. Yes, sir, it did; everything, excluding personal property.

Q. Have you appraised any properties that are near the subject property, which, to your mind, are comparable or would furnish a basis for an opinion to be given in this case?

A. The nearest property in that district which I have appraised was the Williams' ranch. It is located two or three [1262] miles from the Sutro property, in the San Luis Rey River Valley, di-

(Testimony of Stanley E. Goode, Jr.)

rectly east, I would say, of the Sutro ranch approximately three miles, and the Pankey ranch at Bonsall which I believe is about five miles, more or less, possibly a little longer distance, up the San Luis Rey Valley at the intersection of Highway 395 and Pala Road, consisting of 4,200 acres.

Q. By the way, what is the acreage of the Williams property?

A. I don't recall exactly, but it is approximately the same size as the subject property.

Q. Any other ranch properties?

A. In connection with the Pankey ownership, I also made—well, I have actually appraised the 4,200-acre ranch twice, and was on the land in connection with the sale of that property at another date, when it was proposed for purchase by the State of California, and I appraised 300 acres of irrigated pasture land owned by one of the Pankey brothers in that same vicinity.

Q. And how near is that to the subject property?

A. That would be the same distance as the other ranch. In other words, it is property lying adjacent thereto.

Q. What other ranch properties did you appraise besides those mentioned?

A. Those are the nearest properties that I can recall offhand in the San Luis Rey Valley [1263] district.

I have appraised approximately 3,600 acres of land in San Diego County in connection with the

(Testimony of Stanley E. Goode, Jr.)

acquisition of Camp Lockett, appraised for the Government, but that is quite some distance from the subject property. It is at the opposite end of the county.

Q. Did you appraise any other ranches in Southern California? A. Yes, I have.

Q. Which ones did you appraise?

A. Well, I appraised the Harriet Heath properties, which involved 50,000 acres of land in Imperial Valley, San Bernardino and Riverside Counties, Orange and Los Angeles Counties, Kern County, Kings County and Fresno County.

The Susannah Bixby Bryant property, which consisted of 10,500 acres, more or less, located within Orange and Los Angeles Counties.

These are entirely agricultural lands that I am speaking of.

The James Irvine properties, that is, the properties that were in his estate, not the 93,000-acre ranch, but 1,100 acres which were in his estate, located in the Lakewood district, which at that time was classed as agricultural or land in a transition stage, but today would definitely be in the middle of the city.

I mentioned the Fred Bixby properties. [1264]

Q. By the way, on the Fred Bixby properties, were those properties owner-operated, or were they tenant-farmed?

A. The lands in Los Angeles and Orange Counties were entirely tenant-operated, truck crop land, land that was used for the production of alfalfa,

(Testimony of Stanley E. Goode, Jr.)

lima beans, black-eyed beans, various types of truck crops, while some of the lands in Santa Barbara County were cattle ranches, and those were owner-operated.

Q. Any other ranches of farm and grazing land that you have appraised?

A. I have appraised the Moulton ranch in Orange County, lying along the coast immediately south of the El Toro Marine Base, running down to the coastline at South Laguna. I have appraised that twice. Once in connection with the arbitration over the division of the ranch between the Moulton and the Deguerre interests, and subsequently for the Moultons on their two-thirds of the ranch, which was eventually partitioned, and I served as appraiser for the arbitrator, who was Mr. Hub Russell, on that particular arbitration, who was the Moulton's representative in that arbitration, but that land is pasture land. It is predominantly a cattle ranch, with dry farm grain, hay, oats, dry farm beans, and some irrigated crops.

Q. Was that in connection with the El Toro Marine Base? [1265]

A. No, I did appraise the land which was taken for the El Toro Marine Base for the Irvine Company, but that was another assignment.

Q. Oh, I see.

A. That involved approximately 4,000 acres of land initially, but I can't state exactly what the total is now, because there have been three subsequent acquisitions for housing, and for extension

(Testimony of Stanley E. Goode, Jr.)

of air fields, and in each instance I have appraised the property for the Irvine Company in connection with those extensions.

Q. The 4,000 acres included farm and grazing land?

A. That land was entirely farm land, that is, it was predominantly irrigated bean land and vegetable truck land, with the exception of the Nemour Housing and the recent extension for the fuel dump, which involved a small amount of grazing land, 300 or 400 acres, approximately.

Q. How long ago did you make that appraisal?

A. Well, there is one I am still working on.

Q. I see. In the course of your investigation for the purposes of that appraisal, did you ascertain the source of the water supply for the 4,000 acres?

A. Yes, I did.

Q. What was that?

A. The water supply for that land is from wells, and from a gravity supply which is brought to that district by [1266] the facilities of the Santiago Dam, and a canal that runs in a southeasterly direction from the Santiago Reservoir to this point.

Q. Did you appraise any other ranch property that you haven't mentioned?

A. I appraised the McNally ranch, which was 2,200 acres of land in Los Angeles County, in 1951, I believe. It was land that was actually in agricultural use, vegetable truck crops, some dry farm land, some orchards, lemons, citrus, and so forth;

(Testimony of Stanley E. Goode, Jr.)

land that is since being devoted to subdivision use, at least, portions of it.

I appraised the Orange County Airport at the time it was originally acquired as a military installation from the Irvine Company, and represented the Irvine Company in that connection.

And the State Mental Hospital site in Costa Mesa, involving 750 acres of land.

I represented the Department of Finance of the State of California on that assignment. It included dry farm lands, irrigated and pre-irrigated lands, including truck crops, chili peppers and that sort.

I appraised the Wagon Wheel ranch, which was a 5,500-acre ranch, owned by Mr. Nohl in the Santa Ana Canyon district of Orange County.

Q. And what was raised on that? [1267]

A. That is a cattle ranch.

Q. A cattle ranch. Are there any other appraisals that you made, which included truck farming, for edible vegetables, and beans, and other similar crops?

A. Yes, sir. I appraised the Santa Ana Army Air Base for the Corps of Engineers, which involved 1,800 acres of land between the city of Santa Ana and the city of Newport, now the site of the Fair Grounds, which at that time was predominantly devoted to the production of lima beans. There were some truck crops grown on the property at that time and in that connection I made an appraisal of the railroad right-of-way from the existing facilities in Santa Ana to the Army Air Base.

(Testimony of Stanley E. Goode, Jr.)

which ran through the Greenville farming area, southwest of Santa Ana, including all types of irrigated crop land, lima bean land, and so forth, in that district.

The Santa Ana Naval Air Station was another. That is the property commonly referred to as the Blimp Base, or presently the Marine Corps Helicopter Base, located southeast of Santa Ana, and in which case the lands included were sugarbeet, alfalfa, lima bean land, general field crops, with some orchard crops involved, too.

Q. Now, in these appraisals that you made, Mr. Goode, you appraised the land with the improvements thereon? A. Yes.

Q. And you necessarily noted the buildings and the [1268] equipment thereon, did you?

A. In great detail as to the buildings. And considerably less detail as to the equipment. In the case of the type of assignment which I have been mentioning. the equipment, generally speaking, hasn't been a part of our function as appraisers, but in some cases it is our function.

Q. Well, when I speak of equipment, I mean such equipment as is affixed to the realty—

A. Oh, yes.

Q. —rather than to others? A. Yes.

Q. And in all instances, of course, that was included in your application to appraise values?

A. Yes, sir.

Q. Now, were you asked to form an estimate of the loss of the rental value on the Sutro property,

(Testimony of Stanley E. Goode, Jr.)

occurring during the period from 1946 to 1952, inclusive? A. Yes, sir.

Q. Will you state, generally, what steps you took to form an opinion of the value of the property, the market value and the rental value of that property in 1946?

A. I obtained a map of the property, showing its perimeter, the location, and USGS topo maps of the district surrounding the property, and obtained several aerial photographs of the property, and included with this, soil map and [1269] the legal description of the land.

I visited the property, and made my initial inspection of it, and interviewed the owner.

I examined the transcript of the case for the purpose of obtaining what factual information had been previously reported to the Court.

I contacted the San Diego County Assessor's office, and obtained certain data from them, including the tax factor map, showing the soils as their office plots them, and I obtained a copy of the Soil Conservation report.

I went to the Land Title Company in San Diego, after having made a general tour of the district, and employed them to run a chain of title, and furnish a chain of title to me on properties running up the San Luis Rey River valley from the intersection with 395 down to the approximate city limits of Oceanside.

In that connection I obtained actually an abstract record of each recorded instrument that took place

(Testimony of Stanley E. Goode, Jr.)

within the past 10 years on any of the sections of land, any land lying within those sections that I designated, and it happened to be about 16 square miles of land, as I recall.

From those chains of title, I selected the deeds that I cared to inspect, and further employed the Title Company to furnish me with a photostatic copy of such deeds, for the purpose of further processing them and making comparisons of [1270] the selling prices on other lands during that period of time with the subject property.

Q. And did that include, of course, a record of any recorded leases of any other properties?

A. It would but it was quite interesting to note that there wasn't a single lease recorded on any of the 16 sections in that area in the last 10 years.

I then visited the San Diego County Flood Control office, and obtained figures from them on rainfall, and furnished them with a USGS map pertaining to the area surrounding and upstream from the Sutro property, and together with that office assisted in their calculations, the calculations which they made as to the area of the upstream watershed, the number of second-feet of flood water that comes down the channel on rain statistical data, and obtained what information I could from them as to their knowledge of water conditions in that area.

I then went to the Santa Ana Mortgage and Investment records. They are held by the First National Bank, but I have access to them since I am the holder of the remaining assets of the Santa Ana

(Testimony of Stanley E. Goode, Jr.)

Mortgage Company myself, and have full access to their records. And in that connection I went through their files, back to the files of the lawsuit in 1927 on the subject property over water, Cruikshank v. Cox, and reviewed the conditions under which the Santa Ana Mortgage [1271] Company and the First National Bank came into ownership of the subject property, and the correspondence that took place between various brokers and various people who requested information about the property, and leases, offered to lease the property during those periods of time, and read the letters in the file which Mr. Ikemi had written to the bank at the time he was buying the property on contract, describing the crops that were grown and the conditions of hazard that existed on the property at various periods under his ownership. I also read the minutes of the board of directors written by Mr. W. B. Williams, who was the president of the bank, and Mr. A. P. Traywick, who was the cashier, and Mr. A. I. Mellentine, who was at that time manager of the bank and is now connected with the Bank of America at Los Angeles; all of these gentlemen who visited the property during the period of time that Mr. Ikemi owned the land, and made written notes as to the conditions that they found on the property during that period of time.

I have examined all those records in detail, for the purpose of getting as much historical background as I could about the untility of this land

(Testimony of Stanley E. Goode, Jr.)

and the farming practices on the property, the availability of water, and the actual conditions of the land during the period of time that the Santa Ana Mortgage Company was interested.

I also obtained some photographs taken of the subject [1272] property as far back as 1927, and some interesting maps in connection with that investigation.

Mr. Cranston: If the court please, I didn't get the date.

The Witness: Which date, sir?

Mr. Cranston: The last date. Was that 1947, or '37, the date of the photographs?

The Witness: 1927.

Mr. Cranston: 1927?

The Witness: Yes, sir. I obtained a copy of Bulletin No. 59 from the County Health Department, and talked to County health officials in San Diego County and in Orange County for the purpose of discovering something of the history of the pollution there, and an interpretation of some of the rules that are laid out in that bulletin.

I made a complete physical examination of the subject property as to its contour, and the type of growth, and the soil conditions. In connection with my soil investigation, I was guided there by the government soil map that is prepared on the property, together with the tax factor map, and in conjunction with an aerial photograph, a dehandled shovel, a soil tube, and a kit for testing the acidity or alkalinity of the soil, I went over various por-

(Testimony of Stanley E. Goode, Jr.)

tions of the property and made observations as to soil texture, soil depth, alkalinity or acidity at the various soil depths, and [1273] was able to break these soils on a Storie rating system for my own particular use, not as a mathematical approach to value, but as a method of judging the value agriculturally. And these individual areas were plotted on the aerial photograph, and transferred from that to a tracing, and the individual areas were computed, that is, the classifications of land were computed by myself off the aerial photograph, using a polymeter to determine the irregular areas.

Q. And those maps and photographs are now available?

A. I don't have them with me at the moment, but they are available in my files; everything that was used.

I interviewed a number of people in connection with obtaining information about the general area.

I talked with Mr. Zuckwieler in connection with the background of the conditions of pollution, as to the method of testing, and a few things of that nature. I talked to Miss Whelan.

Q. Who is Mr. Zuckwieler?

A. He is now retired. He was formerly an employee of the San Diego County Health Department, who made tests of the water, the polluted water on the subject property, and, as I recall, was the gentleman who tested the water at the time the letter mentioned in the transcript was sent to Mr. Brown asking him to cease raising edible vegetables.

(Testimony of Stanley E. Goode, Jr.)

I talked to Miss Whelan, who was a tenant on this [1274] property, and who owns adjacent property to the south, with regard to the condition of the soil on the property in the area of the ranch that she farmed, the designated areas that she planted to different crops; inquired as to the length of time she was on it, as to the success or failure of the crops which were planted there; as to water conditions, the amount of water, and various other items pertaining to the subject property, as well as the general area.

I talked to Mr. Rex McDaniel, who was also a tenant on the property, and inquired as to things of the same nature from Mr. McDaniel.

I believe that I mentioned the gentleman connected with the First National Bank at Santa Ana, Mr. W. B. Williams, and E. B. Sprague, and A. W. Mellentine. The information that was obtained from them was on their field observations and on the history of the property.

I talked to Ed Pankey and Bob Pankey, both of whom are farming substantial acreages in the area I previously described as the Pankey ranch, and have been farming in there for some time, farming alfalfa, lima beans, truck crops, irrigated pasture, dry pasture, and so forth, and who have been in the lessor and lessee positions both on agricultural leases in the area for many years, and are familiar with conditions existing there in the San Luis Rey Valley. I inquired from them about their opinions of the adaptability of [1275] the Sutro property. I

(Testimony of Stanley E. Goode, Jr.)

asked Bob Pankey about his recollections of the property, which he had been on previously in connection with his official duties as a member of the board of directors of the San Luis Rey River Water Conservation District.

I was able to obtain information as to what both of these men thought the subject property was best suited for in crops, and what these crops would yield, and what they felt the good and bad points about the property were.

I also interviewed Mr. Travis Flippen, who has farmed for a number of years just above the San Luis Rey River there, between the Pankey ranch and the subject property, and who has grown lima beans, black-eyed beans, truck crops, alfalfa, and has also leased his land for these purposes during some portion of that time.

Mr. Cranston: Might I ask you to restate that gentleman's name?

The Witness: Travis Flippen, F-l-i-p-p-e-n.

Mr. Cranston: Thank you.

The Witness: And I talked to Clarence Nishizu, who was one of the most extensive operators of truck crop land in that general area, and asked him questions about crop adaptability, about the productivity of this subject property, which he had been on within 30 days of the time I talked with him, for the purpose of finding out what rent he would pay for the [1276] property; and I was able to get his opinion of the rental value of the property, what crops it was best adapted to; the type of

(Testimony of Stanley E. Goode, Jr.)

production that could be expected; and various comments about the property itself, as to the conditions that existed there.

I talked to Mr. Paul Bailey, who is the water engineer for the San Luis Rey River Valley Water Conservation District, to obtain information about the geology of that area, as to the water conditions, availability of water in the vicinity and beneath the Sutro land, and the general district surrounding it, and, against, about the watershed, and the nature of the watershed, and the runoff down Pilgrim Creek. He had been on the property, and was familiar with conditions there, and knows that land.

I contacted the Eleventh Naval District, and obtained the information which they had as to the production of lands on Camp Pendleton that are currently leased to private operators for the various purposes of growing flowers, truck crops, black-eye and lima beans, hay and grain, and was able to obtain the rents being paid and the conditions under which those rents are being paid, for use in comparison.

I carried on my analysis by utilizing this classification of acreages of the land in trying to analyze what the optimum use was of each of the classifications, and to compute it out, and by making comparisons of these lands with [1277] the other lands that had been sold and rented in the district, obtain some relationships useful in estimating the value of this property.

(Testimony of Stanley E. Goode, Jr.)

My value, of course—my estimate of value, of course, is based on comparison of actual sales that occurred during that period of time. My rental value is based on comparable leases on other lands, by comparison of those, and by an analysis of the crop share relationships converted into dollars and cents in the value of land.

And I made an effort, in connection with the study of sales and leases, to determine the relationship between rent and value, as regarding an acre of ground with a given value, at what percentage of that value should an acre rent in pattern of lands generally in that district, each farming district having a characteristic of that type, wherein there is a very definite relationship between rent and value, and I utilized the data which I obtained on rentals and sales in order to analyze and get an opinion of that relationship between rent and value.

Then after using that as an additional check, why, I was able to form an opinion of both rental value and fair market value.

Q. (By Mr. Weymann): Now, Mr. Goode, on the basis of your analysis, you had prepared a classification map, had you not, of the subject [1278] property?

A. I have just a small classification map in my own notebook here, and I have just a single copy with me. I have a large map, four USGS maps, put together, with numbers on it showing the location of the data.

Q. Yes, that is the map I have reference to.

(Testimony of Stanley E. Goode, Jr.)

A. Yes.

Mr. Weymann: Now, your Honor, if we could put those maps over on the board over by the witness chair, so that he can refer to them.

The Court: Yes.

The Witness: May I leave the stand, your Honor, to assist them?

The Court: Yes.

Mr. Weymann: May that be marked defendant's exhibit next in order, for identification?

The Clerk: That will be Exhibit DD, for identification.

(The document referred to was marked Defendant's Exhibit DD for identification.)

Q. (By Mr. Weymann): Now, Mr. Goode, those basic survey maps are official maps, aren't they, which you have assembled?

A. Yes, they are. They are USGS maps which I purchased, and have joined the four so as to show a larger area than could have been shown on one single map.

Q. Calling your attention to the red and green circles, [1279] with numerals in them, did you place those on the maps?

A. Those were actually placed on this copy of the map under my direction.

Q. And what do they represent?

A. They represent the sales and the listings of

(Testimony of Stanley E. Goode, Jr.)

other properties which I found in that district.

Q. And which represent the sales?

A. The green numbers represent the comparable leases, and the red numbers are indications of the fair market value in the form of sales, offers or listings of property.

Q. And the area colored in yellow represents the subject property, does it? A. Yes, sir, it does.

Q. You made no attempt, of course, to delineate on that map the precise area of those leases and sales?

A. No, I did not. They were too extensive for the problem.

Q. But just to show the location, and those represent the data which you gathered as to sales of property and leases of property in the course of your investigation; is that correct?

A. Yes, sir. It represents the sales of 8,000 acres of land, all totaled, and the leases on 4,300 acres of land.

Q. Mr. Goode, is there a pointer there? [1280]

A. No, sir, there is not.

The Court: That is something which I think we do not have in this spacious courtroom, so we will have to dispense with the pointing at this time. Is it the sales that you want him to identify?

Mr. Weymann: Just to identify the sales and the leases, and state what the consideration was, and the nature of the operations carried on there.

The Court: Are those the sales that you men-

(Testimony of Stanley E. Goode, Jr.)

tioned in the narrative of your qualifications, Mr. Goode, or were there others?

The Witness: I don't believe I mentioned any of the sales specifically that are involved here. I did mention one property. That was the Pankey ranch. That is one item marked No. 33 in red on the map, but these are all properties that I haven't previously mentioned.

Q. (By Mr. Weymann): To clarify the question, Mr. Goode, those are not properties which you have appraised? A. No, sir.

Q. Those are properties which you have investigated as to sales?

A. That I investigated in connection with this problem. I obtained information about those properties. That is why they are indicated on the map. They, however, were not an indication of the value or rental value, as the case may be. [1281]

Q. All right. Then let's proceed.

The Court: Did I understand you to state that those marked in red represented the sales?

The Witness: Yes, sir.

The Court: And you said something about the figures that are in those red markings. What are they?

The Witness: They correspond to my individual data sheets in my notes, where I have the information.

The Court: And what do they represent—the figures?

(Testimony of Stanley E. Goode, Jr.)

The Witness: The number means nothing, except for identification purposes.

The Court: This is going to consume some time, I see. I thought perhaps we could get his opinion in the record today, but if you want to go at it this way, I suppose we will have to take the time. It is now 4:30, and I think we will resume tomorrow at 10:00 o'clock. We ought to be able to speed up a bit now.

Mr. Weymann: I think we can, your Honor. I think we have it organized so that we can.

The Court: Very well. 10:00 o'clock tomorrow morning, gentlemen.

(Whereupon, at 4:30 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Friday, March 5, 1954.) [1282]

Friday, March 5, 1954—10:00 A.M.

The Court: Proceed, gentlemen.

STANLEY E. GOODE, JR.

the witness on the stand at the time of adjournment, having been heretofore duly sworn, was examined and testified further as follows:

Direct Examination

(Continued)

By Mr. Weymann:

Q. Mr. Goode, when the court recessed last night, you had testified as to certain investigations that you had made as to rentals and market value and

(Testimony of Stanley E. Goode, Jr.)

land in the vicinity of the subject property, and those were depicted by you on Defendant's Exhibit DD, I believe it is, for identification?

A. Yes, sir.

Q. Now, are all of the sales and rentals which you investigated depicted on that map?

A. Not entirely, Mr. Weymann. At the left-hand side of the exhibit to which you referred, you will note the numbers L-12 to L-29 in green, and that indicates a series of transactions. Rather than putting all the individual numbers on there, that was referred to as a series, which includes individual items bearing all the numbers between 12 and 29, inclusive.

Q. And those numbers are merely references to your detailed [1284] data as to those sales and rentals; is that right? A. That is correct.

Q. Do you have those data with you, and are you prepared to testify as to those details, if you should be asked by the court or by counsel?

A. Yes, sir, I have. I have them here.

Q. Those cover the period from 1946 to the present date? A. That is correct.

Mr. Weymann: Well, we won't go into the details of those, if the court please, because that would occupy too much time. However, I would like to introduce that as the defendant's exhibit next in order.

The Court: So ordered.

The Clerk: Are you referring to the map?

Mr. Weymann: I am referring to the map.

(Testimony of Stanley E. Goode, Jr.)

The Clerk: That is Exhibit DD in evidence.

(The exhibit referred to was received in evidence and marked Defendant's Exhibit DD.)

Q. (By Mr. Weymann): Now, Mr. Goode, in preparing yourself to testify in this action, what factors did you consider?

A. I considered that this ranch consisted of approximately 298.10 acres in total. I might say that the exact acreage is a little in question, but the variation wouldn't affect the valuation for this purpose. And that this land was distributed between various classifications, which I will indicate, [1285] and can indicate on a sketch which I have prepared, if the court desires.

There were 37.5 acres of irrigated bottom land and 19.05 acres of irrigated slopes adjacent to the bottom land, making a total of 56.55 acres, which I am referring to when I use the term "bottom land."

The mesa land contained 25.8 acres of irrigable land.

Mr. Cranston: What was that figure, Mr. Goode?

The Witness: 25.80, thus arriving at a subtotal of 82.35 acres capable of irrigation.

In addition there were 54.60 acres of dry farm land and 18 acres of alkali ground in the flat, which is physically capable of irrigation, but not included within the above irrigated land classification due to its alkaline condition.

The balance of the property consisted of 129.31

(Testimony of Stanley E. Goode, Jr.)

acres, including mostly dry pasture, creek bottom, ranch roads, and waste land. Including the ranch roads and wash land, there is an additional 13.84 acres that I didn't mention, giving a grand total of 298.10 acres.

I considered the fact that these lands were irregular in shape, and interspersed by various irregular areas of pasture, and so forth, that they weren't rectangular or square fields, and I considered the economics involved in connection therewith, as to the operation of this as an agricultural property.

Q. (By Mr. Weymann): By the way, Mr. Goode, did you prepare [1286] a sketch of the subject property showing your soil classifications and the various acreages to which you have testified?

A. Yes, Mr. Weymann, I did.

Q. I have shown this to counsel, and I will show this to you, Mr. Goode, and see if that is the sketch which illustrates your division of the acreages and the soil classifications which you have given.

A. This sketch does contain my computations. I prepared the outline of the areas, drew the original of this map, the copies were prepared under my direction, and the figures which it bears as to soil classifications are my conclusions as to the soil types that are involved on the various parts where they are indicated, and the areas shown in acreage are the areas which I computed with a polymeter myself, based on field observations, aerial photograph, and tax factor map, and so forth.

(Testimony of Stanley E. Goode, Jr.)

Mr. Weymann: May that be marked into evidence?

The Court: No objection, Mr. Cranston?

Mr. Cranston: No, your Honor.

The Court: So ordered.

The Clerk: Into evidence, your Honor?

The Court: Yes.

The Clerk: That will be Defendant's Exhibit EE in evidence. [1287]

(The exhibit referred to was received in evidence and marked Defendant's Exhibit EE.)

The Court: Do you have copies of that, Mr. Goode?

The Witness: I have my copy, and this one copy is all, your Honor.

The Court: You might let counsel have it. I will look at it later.

Mr. Cranston: If your Honor wishes to look at it, I can look at it during the recess.

The Court: I just want to look at it for a moment, but when he testifies you will want to have it before you.

I have looked at it. Proceed, Mr. Weymann.

Q. (By Mr. Weymann): What else did you consider, Mr. Goode?

A. I considered the fact that the house well, referred to as the well on the mesa, was polluted in supply for a period of seven years, during the period from 1946 through 1952, and that this was a water well unequipped as to irrigation pumping facilities,

(Testimony of Stanley E. Goode, Jr.)

and that would have produced reportedly 33 inches of water, irrigation water, sufficient to take care of approximately 33 acres.

That irrigation well No. 2, which was the well Mr. Sutro drilled below the mesa on the flat, was polluted in supply for a period of two years, between 1950 and the end of the damage period in 1952, and that that water supply, into which [1288] that well was drilled, was known to be polluted at the time. And I considered the fact that that well is reported to produce 44 inches of water, and the fact that it consists of a well casing without pump or motor and is, therefore, not during this period of time capable of the delivery of water without the installation of equipment on it.

Q. Incidentally, Mr. Goode, there has been testimony here as to the number of gallons the well was capable of producing. Have you converted that into inches?

A. Yes, I have. The relationship is 9 gallons per minute equals 1 inch, and the inch of water referred to is the quantity required to irrigate one acre of land, and for that reason I preferred to express my statements in inches, because I believe that it is more simple to understand.

Q. All right. Proceed, Mr. Goode.

A. I considered that the Pilgrim Creek flow was polluted as to supply for the seven-year period from 1946 to the end of the damage period in 1952. And I considered that in addition to the normal flow of Pilgrim Creek, which had been previously used on

(Testimony of Stanley E. Goode, Jr.)

the property of Mr. Ikemi, there was an additional rather substantial quantity of approximately 80 inches of water coming down the stream from the installations of sewage treatment plants on Camp Pendleton.

I considered in this connection that plant No. 1 had an average daily flow, which fluctuated over the years depending [1289] upon the personnel in the camp, all the way from 307,000 gallons per day up to a high of 741,000 gallons, and that plant No. 2, during the period 1945 through 1950, had a flow varying from approximately 339,000 gallons up to approximately 580,000 gallons of water.

These statistics are based on Mr. Cannon's previous testimony in the trial.

I considered that during the period from January of 1946 to August of 1950, or for a period of five years, that water supply available during that five years consisted of 33 inches from the house well, a reported 30-inch flow, based on the water that naturally was available in the creek through pumping from the pit in the manner that Mr. Ikemi previously had, and that the Navy sewage water accounted for an additional 80 inches, so that during that period of five years there were 143 inches of water available, which water, of course, was polluted during that five-year period.

Then I considered that from August, 1950, to December, 1950, the Navy sewage water had decreased in supply, because plant No. 1 had been diverted and that, therefore, the Navy sewage water

(Testimony of Stanley E. Goode, Jr.)

merely amounted to approximately 30 inches at that time, in addition to the 30-inch creek flow, natural creek flow, and the 33-inch house well, which left a total for that four-month period of 93 inches.

Then I considered that between December of 1950, which was [1290] the time that Mr. Sutro drilled the irrigation well No. 2 in the flat, and July of 1952, the end of the damage period, there was a total of 134 inches of water available, consisting of 33 inches in the house well, that 30 inches of natural flow of Pilgrim Creek, and 30 inches of Navy sewage water up until the time that plant No. 2 was diverted into the Santa Margarita watershed.

I considered in that connection that the only measurement we had, or, rather, the only indication statistically that we had as to the flow of Pilgrim Creek, the natural flow before the sewage water was placed in the creek, was from information furnished by Mr. Ikemi, and I considered the fact that during his term of ownership we had several years of extremely heavy rainfall, in fact record rainfall, and I considered the fact that that may have affected the water availability in Pilgrim Creek in subsequent dry years, although I didn't reduce his estimates in these showings of the total inches available during that period of time.

I also in that connection considered the information given to me by Mr. Paul Bailey and Mr. Thomas of the San Diego County Flood Control regarding water conditions in that watershed, and the nature of it, and the availability of water.

(Testimony of Stanley E. Goode, Jr.)

I considered the hazards of flood, frost, and drainage as they pertained to the property.

I considered the information by Mr. Thomas, the San Diego [1291] County Flood Control Engineer, furnished me, indicating that on a 20-year flood 1900 cubic feet a second of water came down Pilgrim Creek, which is 3.35 times the capacity of the creek channel, and I considered that in the light of the economic soundness or unsoundness of spending money on lands which would be affected by that hazard in the event of a 20-year flood for leveling and installation of irrigation systems and anything that would require development and expenditure of money on the flat ground that is exposed to that hazard.

I also considered in that regard the practicability or impracticability of reclaiming the alkali area which at the lower end of that flat, consisting of 18 acres, is likewise subject to that same hazard.

I was able by personal observation to support his calculations by some measurements which I made in the creek right after a rainfall of known amount, and reporting to him from the field actually the amount of water, the depth of water that had been in the channel, which supported his calculations.

I considered the fact that if this land had had an unpolluted water supply——

Q. Before you pass to that, did you have any information as to any frost hazard?

A. Yes, sir, I did. I previously testified that I

(Testimony of Stanley E. Goode, Jr.)

had [1292] examined the letters written by Mr. Ikemi during his ownership, and I examined the letter which he wrote on November 12, 1938, stating that frost had ruined all——

Mr. Cranston: If the court please, I will object to the statements that the witness, Mr. Ikemi, made in the letter. Mr. Ikemi was on the witness stand, and was subject to cross-examination, and they did not go into this then, and I submit he should not be able to state at the present time what was in a letter which he saw that Mr. Ikemi wrote.

Mr. Weymann: If the court please, the witness is stating the sources of information on which he reached his conclusion.

The Court: But the source of the information must be either in the record at this time or consist of official documentary evidence, and this would not be in either of those classifications, according to my recollection. I don't recall that Mr. Ikemi referred to the letter. Perhaps I overlooked some of them in the case at San Diego, but I don't recall any letter in the record from Mr. Ikemi to that effect.

Q. (By Mr. Weymann): Do you have that letter, Mr. Goode?

A. No, sir, I do not. The letter is in the files of the First National Bank in Santa Ana, and the files of the Santa Ana Mortgage Company, but I do not have the letter with me. I have examined it, and I am prepared to state what the contents are of that letter.

(Testimony of Stanley E. Goode, Jr.)

The Court: Don't state what it is. That is what their [1293] objection was.

The Witness: I see.

The Court: And I think their objection is well taken.

Q. (By Mr. Weymann): All right. What is the next matter that you considered?

A. I believe I started to enumerate the crop adaptabilities of this land under a condition of unpolluted water as against polluted water, and the crops which I will mention here in this first group refer to the 56.55 acres of irrigated flat. On that land, with unpolluted water the land is adapted to the production of alfalfa, which can either be cut green or baled. And under polluted water, the same condition prevails, the same utility as to that crop. However, its position as a crop would be somewhat enhanced by the additional availability of water at creek level rather than at well bottom level, some 80 feet lower.

The land likewise is adaptable to irrigated pasture under either unpolluted or polluted conditions. And there again the presence of additional water would make it more desirable for pasture land.

The land is adaptable under both conditions for Sudan grass, or seed crops, or for the growing of commercial flowers.

Under conditions of unpolluted water, the land is well adapted to the production of black-eye beans or lima beans, [1294] which, in my opinion, would develop a rental of \$60 to \$65 per acre.

(Testimony of Stanley E. Goode, Jr.)

And under conditions of polluted water, these same two crops, black-eyes and lima beans, can be grown by pre-irrigation, which consists of a complete thorough irrigation of the ground before the seeds are planted, and then no application of polluted water during the growing of this crop, which is necessary for it to comply with the health regulations.

Q. Is pre-irrigation usual and customary?

A. It is very widely used in the growing of both black-eye and lima beans in the vicinities of Orange, San Diego, Los Angeles, and San Bernardino Counties, and Riverside County, and I am prepared to name a wide number of areas—I mean within that—where that practice is used in the irrigation of these crops, that is, not with sewage water that I am referring to. However, I can also illustrate on the Irvine Ranch where the sewage water from the El Toro Marine Corps Station, coming from Imhoff tanks, is used for the pre-irrigation of both lima and black-eye beans.

The land could likewise be adapted, under conditions of unpolluted or polluted water, to the growing of corn for silage, or for the growing of sugar beets.

There are crops which, as a group, could be classed as truck crops which cannot be grown except under conditions of unpolluted water, and I believe that the crops that can be [1295] grown on the property, while this may not constitute all, it constitutes a good section of the crops that it is adaptable to, would

(Testimony of Stanley E. Goode, Jr.)

consist of asparagus, chili peppers, strawberries, cabbage, cauliflower, celery, broccoli, peas, tomatoes, corn, squash and lettuce.

These crops would be subject to frost hazard during the winter—not all, but most—and that would be a factor over and in addition to the question of pollution or unpollution that existed. But the land, in my opinion, could be devoted to the production of those crops, assuming proper weather conditions during the growing period.

Now, as to the 25.8 acres of mesa ground, which I class as irrigable mesa ground, it is the only land that I class as irrigated or irrigable other than the flat which I previously mentioned, under the condition of polluted or unpolluted water it is equally adapted to irrigated pasture, or to seed crops, or to the production of flowers. With respect to beans, the land is adapted to the production of beans as an irrigated crop, or beans as a pre-irrigated crop under conditions of pollution.

It likewise has the same general pattern of truck crops, with a few exceptions, such as chili peppers and asparagus, which I don't believe are adapted to that condition that exists on the mesa but, generally speaking, the same truck crops could be grown on the mesa land if the water were unpolluted, [1296] and if the water were polluted they would not be permitted to be grown there.

On the balance of the ranch, which is actually unaffected by the question of pollution or non-pollution of the water, referring now to the dry farm

(Testimony of Stanley E. Goode, Jr.)

lands, those lands are best suited to dry farming to black-eye beans, grain, barley, hay, and so forth, and the adaptability of those lands would be identical both before and after the conditions of pollution.

In this regard I might say that I considered within these individual classifications of land the typical rentals that are paid for them, and the amounts of rent which they develop on a crop share, and while I don't have in front of me mathematical support for each crop that I have mentioned out of this wide variety, I am prepared to state with regard to specific crops, generally speaking, what I think they will develop, and what the pasture land will develop in the way of rent on the various pieces that it is computed.

Q. In any event, those were matters which you considered? A. That is correct.

Q. Did you consider any other use besides those which you have mentioned ?

A. I believe that I have covered all except the conversion of that property into a cattle ranch or a dairy. I think that the greatest consideration between those two was given to the operation of that land as a beef cattle ranch, including a [1297] combination of wet pasture and dry pasture, with a possibility of some feed growing on the dry farming areas in connection with the operation, and utilizing the surplus water, polluted water available in the stream during that interim period of rental loss, the damage period I am making reference to, diverting that water so as to irrigate the pasture and at the same

(Testimony of Stanley E. Goode, Jr.)

time enhancing the position of the land, and accomplishing this without an expenditure of money for any permanent elaborate systems, or anything of that nature, and at the same time providing a good rental return because of the beef cattle situation during that period of time.

Q. What other matters did you consider, Mr. Goode?

A. I considered in that light of the pasture operation, the comparable rentals of other pasture on the various methods.

I considered that the bottom land, again referring to the 56.55 acres, would have rented at figures varying from \$50 to \$60 per acre with unpolluted water, and with polluted water at figures varying from \$25 to \$50 per acre.

I would like to explain that spread as being one that refers to time, that is, the difference in year, and with that the difference in stage, that, for example, a crop of alfalfa might be in wherein during its first year, its initial planting year, it is not producing the amount of crop return on a crop share it would during its second year and its third year, [1298] and during the final stage of the alfalfa it would likewise tend to reduce to a lower figure. So these are outside figures within the range that I computed.

I considered that the alkali land, consisting of 18 acres, was unaffected by the pollution, since the land was best suited for wet pasture, and for that pur-

(Testimony of Stanley E. Goode, Jr.)

pose would bring a rent of \$10 per acre per year under either condition.

The irrigable mesa land, consisting of 25.8 acres, I felt had a value, a rental value, of \$35 per acre if unpolluted and that with polluted water this same land would rent for approximately \$20 per acre.

I considered that the dry farm land would rent for \$20—that is, develop an income of approximately \$20 per acre, and that that would be unchanged with water pollution. And that the pasture land would develop an income of approximately \$2.50 per acre per year, and that likewise would remain unchanged under conditions of pollution.

I considered the historical facts that I was able to ascertain about this property, the crops which were grown during Mr. Ikemi's ownership, the success and failure of these, the areas that were irrigated, and, of course, the observations of the gentlemen whose names I have mentioned previously, who were on the property during that period of time, with a view to obtaining as much information as possible about what actually had been done on the property, or had been indicated as [1299] practical by the farming operations of the previous two owners. And in that connection I obtained all the information, and considered all the information about hazards, and so forth, that was written in various documents within the files of the Santa Ana Mortgage Company, now held by the First National Bank.

I gave consideration to these sales and offerings,

(Testimony of Stanley E. Goode, Jr.)

referring to 8,000 acres of land, or involving 8,000 acres of land, and likewise gave consideration to the leases on 4,300 acres of land. These each involved approximately 30 transactions. And in that regard I gave consideration to the relationship between rent and fair market value during the various periods of time on which I had data. I tried to, and did, arrive at calculations as to the relationship between rent and value or properties of different classifications in that area, and was able to make, of course, comparisons on a wider spread basis with previously developed information on other areas where I had made these similar calculations, for example, the Chino Valley, the Orange County area, the Oxnard-Ventura district, the Sacramento Valley, and places of that nature, to see how this correlated with the relationship between rent and fair market value in those other areas.

Q. And how did that relationship develop?

A. The relationship in that area, in my opinion, is 10 per cent of the fair market value. If a piece of land is [1300] worth \$1,000 per acre, it will rent on a cash rent of \$100 an acre; if it is worth \$500 per acre, it will rent for \$50 an acre. And it is interesting to note that that relationship prevails right on down to the pasture lands, in many instances, down to the lowest classifications of land. Now, there are some variable conditions from that, but that is a general condition that exists within that area.

Q. All right, Mr. Goode.

A. I considered in this connection the home site

(Testimony of Stanley E. Goode, Jr.)

qualities of that property, that it is located in a pleasant valley, with good surroundings, and an ideal climate for living conditions, certainly a desirable area in which to locate, but that it had no exclusive condition there on this property that wasn't prevailing also in the surrounding areas nearby.

I considered with regard to the development of the property, that is, further installations or changes in the property which would be connected with its farming operation, that it would be impractical to attempt to fence the ranch, because of the irregularity of the pastures and the fact that the cost of the fence would exceed the value which it would purport to enclose.

I considered with regard to the development of the bottom land, and by "development," I am referring now to installation of permanent irrigation lines and leveling and alkali reclamation of the flat, that it wouldn't be practical in view of the [1301] hazards that exist there as to flat and also that the feature of, well, the law of diminishing returns would enter into it as to the amount of increase in value of the return that you would get, as compared with the cost involved in certain instances.

Q. By that do you mean that the cost of development is not necessarily reflected in any increased value of the property?

A. Sometimes the cost of development will be greatly exceeded by the resulting increase in market value, such as in the instance of a dry piece of land

(Testimony of Stanley E. Goode, Jr.)

where a well and equipment is installed at a cost of \$5,000, it might increase the land value by \$10,000 or \$15,000. On the other hand, you might spend \$5,000 in leveling and increase the value of the land \$5,000. In another instance, where this law of diminishing returns comes into effect, you might spend \$10,000 on a piece of property, and only result in an increase in value of the property of only \$2,500, which is a matter of astute computation to determine where the stopping point is, where it is economically practical to stop.

Q. Does that cover the matters you took into consideration?

A. I believe it does, Mr. Weymann.

Q. And based on that analysis and investigation, and the examination of the property, and the investigation of sales [1302] and leases of surrounding properties, have you arrived at a conclusion as to the fair market value of that property in 1946, January of 1946?

A. Yes, sir, I have.

Mr. Cranston: If the court please, is this a proper matter for inquiry, the fair market value, in this proceeding?

The Court: I do not want to go into it too extensively, because it will lead to a narration of extraneous matters to an unlimited degree. It does have some effect on the rental value, but not too much in this case, I think, because of the peculiar situation in the case. I don't believe I care to go into that. I am afraid it is going to lead us into

(Testimony of Stanley E. Goode, Jr.)

other avenues of that feature.

Mr. Weymann: The only thing I want to establish here, your Honor, is the value of that property in 1946, in the condition that it existed, and the value of it which would have obtained had the pollution not existed.

The Court: If you will frame your question so as to obviate a lengthy discussion of details, I will permit the figures to be given. But I am not going to go into that in an exploratory manner.

Q. (By Mr. Weymann): Mr. Goode, have you an opinion as to the diminution in the market value of that property at the time Mr. Sutro bought it, by reason of the pollution of the water? [1303]

Mr. Cranston: If the court please, I do not believe that that is in line with the court's instructions.

The Court: No, it is not. If they want to go into the matter in detail on cross-examination, without prejudging the matter at this time, I do not see how I could restrict the cross-examination, but it is not proper on direct examination in this case, in my judgment, to explore the value of the property, because we are not accepting it insofar as that reflects something about its rental value. We are not concerned with it under the rulings the court has made.

Mr. Weymann: The reason for that, your Honor, is this: That the witness has just testified that there is a relationship.

The Court: Why can't you ask him a question

(Testimony of Stanley E. Goode, Jr.)

to draw from him what he thinks the property was worth, without going into it in a round-about method which will lead to a number of questions which I think are within the objection that counsel has made?

Q. (By Mr. Weymann): Then I will ask you, Mr. Goode, what in your opinion was the property worth in 1946?

Mr. Cranston: Will you specify whether you consider the matter of polluted water in the question? Under what conditions are you asking for the value of the land?

Mr. Weymann: Under the conditions that existed at that time. [1304]

The Witness: Under the conditions that existed on the property as of January, 1946, the property had a fair market value of \$34,000.

Mr. Weymann: Well, now, under the court's ruling—I don't want to trespass upon that—my purpose then was to ask him what would have been the fair market value had the water not been polluted. If that comes within the scope of the court's ruling, why, I will not ask him.

The Court: I think it does, because the water was polluted. It was polluted at the time of the purchase by the plaintiff.

Mr. Weymann: Very well.

Q. (By Mr. Weymann): Now Mr. Goode, have you reached a conclusion as to the diminution of rental value of the subject property by reason of the pollution of the water, from the time of the pur-

(Testimony of Stanley E. Goode, Jr.)

chase to the time the water from Camp Pendleton was diverted into the Santa Margarita watershed?

A. Yes, sir, I have.

Q. And, in your opinion, what is that diminution in value?

A. \$10,000. That is the total figure for the seven years.

Q. That is the total figure. Now, Mr. Goode, will you please state your reasons for the conclusions which you have just expressed? [1305]

A. One of the reasons that I arrived at these estimates is that the property had certain features of uncertainty connected with its operation and development during that period of seven years; one referring to its domestic water supply. Secondly, it had uncertainty with respect to the installation of the irrigation system, referring to portions—we will say, the domestic water system and the development of the mesa well, and as to the installation of pumps on these unequipped wells. There was uncertainty that existed with regard to any building program, that again referring back to the question of availability of domestic water, and there was uncertainty that existed as to the leveling of the land, the advisability of leveling because of the water conditions that existed, that coming into play because the degree of leveling has some bearing on the type of crop which is to be grown.

There was uncertainty as to the advisability of installing additional wells, pipelines, or anything further connected with the water system, and uncer-

(Testimony of Stanley E. Goode, Jr.)

tainty as to whether to attempt lifting water from the creek in the manner that Mr. Ikemi previously had for the irrigation of his crops. I am referring there to the natural flow, and the sewage flow.

And there was uncertainty, of course, as to the esthetic characteristics of the property, as to whether or not there would be any unpleasantness connected with having sewage water flowing down Pilgrim Creek. [1306]

In this connection, the last four items which I have mentioned, the leveling of the land, the uncertainty of the leveling, the uncertainty over installing wells, pipelines, and water system, referring to irrigation water, and the uncertainty of lifting the water from the creek, and the uncertainty over esthetic damage, were all factors that existed on the property as of the date of purchase.

The previous items, referring to the building program and the installation of the domestic water system, referred to items which subsequently came about, uncertainties that were not in existence at the time the property was purchased.

I then gave careful consideration, among my reasons, to the things that a prudent operator would do, faced with these uncertainties, and this is based on my own observations there, and my own observations of other farming operations, and my opinion as developed from interviewing a number of operators.

I think that a prudent operator would utilize the

(Testimony of Stanley E. Goode, Jr.)

free ditch water, that is, the free water in Pilgrim Creek, and when I say "free," I mean free subject to a lift of five or 10 feet, enough to boost it out of the creek level onto the field into a ditch, with a sufficient flow thereby existing for 80 acres of irrigation. A prudent operator would have investigated the wide variety of crops which could have been planted on this land under conditions of pollution, the crops that I have previously stated. [1307]

He would have inquired into his ability to lease that land, the market for a lease on that land, which would net to him, or, rather, bring to him a gross rental of 10 per cent of the purchase price that he had paid for the property, without making any changes in the property at all, and without development, and thereby provide a substantial income from any interim period of uncertainty.

The prudent operator would consider the possibility of installing portable pumps and sprinklers, at his own expense on the property, in order to lease it, or the alternate possibility of leasing it to a tenant who would provide his own portable pumping equipment and portable sprinkler system for irrigation.

A prudent operator would have seriously considered the limitations placed on the flat ground by the flood hazard, and that the limitations I am referring to again are the leveling, the development of any leveling in water system, and alkali reclamation.

The prudent operator would have, in my opinion,

(Testimony of Stanley E. Goode, Jr.)

restricted the grain farming. He would not have farmed the flat ground to grain, but would have restricted it to that 54.6 acres which I previously mentioned in my acreage allotments as the dry farm area.

The prudent operator would have irrigated the 56½ acres of the flat ground and 25.8 of the mesa ground, and [1308] would have used the 18-acre alkali area and the balance of the pasture that is on the land for grazing as it was permitted, depending upon the condition of the other fields; when the other fields had no crops in them, that the cattle could disturb, and then the entire ranch within its exterior limits could be grazed as a single unit without the construction of a fence.

I think the prudent operator would have had delivered to the ranch, or had carried to the ranch any drinking water supply used by either help or owner occupancy, and that the prudent operator would have given careful consideration to the installation of a chlorinator himself for clearing up the drinking water in the mesa wells, sufficiently so that it could be used for household purposes, we will say, short of drinking water, meaning dish water, bathing, and that sort of thing, or that he would have explored the area east of the mesa, adjacent to the Vanhisen property, where water is flowing from springs near that area, for the purpose of obtaining domestic water from another source.

I think the prudent owner of the land or prudent operator would consider that living accommodations

(Testimony of Stanley E. Goode, Jr.)

were available elsewhere, and that the land could be farmed without the presence on there, without living on the land, and he would consider that not over 70 acres of this land had ever been irrigated by the previous tenants, and that any expansion of the irrigated [1309] area over and above what two previous owner operators had done would be classed as slightly speculative.

He would consider that the water costs were low on the sewage water in the creek, and that is because of the small lift involved, and that they would be high on the mesa, where you have an effective boost to sprinklers of about 200 feet, that is, including the effect of the sprinkler itself, and he would have considered his water costs, not only in terms of the power necessary to run the pumps, but in terms of depreciation on any pipelines, dams, pumping equipment, including the maintenance and repair of those items, which is a substantially greater factor in water costs many times more than is the actual cost of the power.

The prudent operator would have installed a method of siphoning water from the creek to reclaim, that is, to make use of that water that was running through there, and, in my opinion, would have installed a pump on the mesa well.

And I believe that at that time, in January of 1946, the desirability of converting this into an irrigated pasture, a cattle ranch, would have been seriously considered by any prudent operator.

I also state among my reasons for my conclusion

(Testimony of Stanley E. Goode, Jr.)

of value the information to which I have previously testified, that I have developed through interviews, and through a comparison of sales and leases on comparable properties. [1310]

I believe that covers my reasons, Mr. Weymann.

Q. Now, you referred to the possibility of getting drinking water, and bringing in drinking water from other sources. Do you know of any instances in which that has been done?

A. Yes, sir, I do.

Q. In what instances has that been done?

A. I think the Imperial Valley is the best example, where all water for irrigation purposes in that area is ditch water and is not used for domestic purposes, and anyone who is on that land for the purpose of farming it, for the most part, carries his water to and from, as he does his equipment, and so forth.

Q. Now, Mr. Goode, if the water for the period under consideration, that is, from January, 1946, to 1952—assuming that the water were pure during the period considered, and came from the sewage disposal plants of Camp Pendleton, but did not meet with the equipment standards of Rule 4 of Bulletin 59, would there have been any difference in the conclusions which you have reached?

A. No, sir.

Q. Would that diminution in market value or rental value be different from the diminution to which you have testified?

A. No, sir.

(Testimony of Stanley E. Goode, Jr.)

Q. Do you have any opinion as to the necessity or economic desirability of the buildings and improvements and maintenance [1311] and utilities Mr. Sutro testified he intended to build?

Mr. Cranston: If the court please, I object to that as immaterial and irrelevant, as to whether those buildings were economically desirable or feasible. If Mr. Sutro wanted to build them, and was prevented from building them, that is up to him.

The Court: I believe that would invade the province of the court in this case. I do not think that is an evidentiary matter.

Mr. Weymann: Well, suppose, your Honor, Mr. Sutro evidenced an intention of building a large hotel there.

The Court: There is no evidence that he did.

Mr. Weymann: Well, I am stating that as a hypothetical question.

The Court: That is the reason I say it is an invasion of the power of the court, and the duty, the sole duty of the court, and not that of a witness.

Q. (By Mr. Weymann): Do you know of any ranches which you have appraised, or do you know of any case during the course of your investigation where ranches have been equipped with the same type and same extent of improvements as to which Mr. Sutro and the other witnesses have testified?

Mr. Cranston: If the court please, the same objection, that that is immaterial.

Mr. Weymann: I am asking if he knows. I am simply asking [1312] if he knows of any other cases.

(Testimony of Stanley E. Goode, Jr.)

The Court: Supposing he does know, and supposing the court within its province, does know the history of the times, and with its familiarity as to the terrain and the State of California, would have—and I am not saying that it has—a different view factually than that given by the witness, what effect or what value would the witness' testimony have on the court's decision?

Mr. Weymann: Well, of course, if the court has judicial knowledge of the history, of the terrain and the conditions obtaining there, I am perfectly satisfied to rest it on that basis.

The Court: I know a good deal about it. I have been around there for about 65 years.

Mr. Weymann: I appreciate that, your Honor, and if that is a matter of judicial knowledge——

The Court: I do not say it is judicial knowledge, no, but I am simply trying to point out the lack of value of evidence of that type in a case of this kind. I am not speaking of condemnation suits, where the government is seeking to condemn properties. I am talking of a Federal Tort Claims action, and anything that is within the cognizance of the court, because of its own experience, if it would run counter to the opinion or testimony of an expert witness: The court is supposed to exercise its own intellectual faculties, such as it has, without [1313] the aid of opinion evidence, if it has a knowledge of the subject. And I am not speaking of judicial knowledge in a practical sense. We have had a lot of experience in the trial of these cases and we know

(Testimony of Stanley E. Goode, Jr.)

something about the Imperial irrigation project, a good deal about it, because of litigation that has come before this court. Now, it would be impossible, and we are not going to do it, to eliminate that from this case when it comes to deciding the case.

The objection is sustained.

Q. (By Mr. Weymann): Mr. Goode, at the time you visited these premises and inspected them, did you take any photographs?

A. Yes, sir, I did.

The Court: And I may say also, just to amplify the ruling, and because of the mention of the Irvine Ranch, that we are quite familiar with some of those values; not of recent years, but some time ago, when we had the duty of estimating the value of those properties.

Mr. Weymann: I assumed so, your Honor.

Q. (By Mr. Weymann): I show you some photographs, Mr. Goode, and ask you if you took those photographs? A. Yes, sir, I did.

Q. When did you take them?

A. It was in February of this year. I can provide the exact date, if it is necessary.

Q. I doubt if that is necessary. But it was in February [1314] of this year?

A. Yes, sir.

Q. And what do those photographs show?

A. The first one is taken from the range land on the hill at the west side of the valley, looking towards Pilgrim Creek, and showing the—this is Pilgrim Creek running across the photograph at the

(Testimony of Stanley E. Goode, Jr.)

approximate center—showing the building group to the rear, and showing the Foss Lake area toward the right side of the picture.

Mr. Weymann: Will you mark that next in order, please?

The Clerk: That is Exhibit FF, for identification.

(The exhibit referred to was marked Defendant's Exhibit FF for identification.)

The Witness: The second one is taken from a position northeast of the building area, showing the shop building, I believe that is the term used, at the left of the photograph, and showing the position where Pilgrim Creek enters the ranch from the north towards the right of the photograph, showing the range land in the background, and the gum trees towards the southwest corner of the property.

The Clerk: That is Exhibit GG, for identification.

(The exhibit referred to was marked Defendant's Exhibit GG for identification.)

The Witness: The next photograph was taken from the hills just north of the gum trees that were shown in the [1315] previous photograph, and shows the alkali ground at the southerly end of the flat, and the property line between the Sutro and the Zahnhiser's properties at the location of Foss Lake.

The Clerk: That is Exhibit HH, for identification.

(Testimony of Stanley E. Goode, Jr.)

(The exhibit referred to was marked Defendant's Exhibit HH for identification.)

The Witness: The next photograph was taken from the extreme southwesterly hill, knoll on the property, showing in the foreground in front of the angular line an area belonging to Mr. Zahnhiser; showing immediately to the rear of that the lower end of the flat on the property, and the alkali ground towards the left side of that flat near the gum trees. The building group is shown in the far distance at the approximate center of the photograph.

The Court: Are the gum trees on the Sutro property?

The Witness: Yes sir, they are.

The Clerk: That is Exhibit II, for identification.

(The exhibit referred to was marked Defendant's Exhibit II for identification.)

Mr. Weymann: Now, I offer that series of photographs in evidence.

The Court: So received.

The Clerk: That is FF to II, inclusive, into evidence. [1316]

(The photographs referred to were received in evidence as Defendant's Exhibits FF to II.)

Mr. Weymann: You may cross-examine.

The Court: I think we will take our recess now.

(A short recess.)

The Court: Cross-examine.

(Testimony of Stanley E. Goode, Jr.)

Cross-Examination

By Mr. Cranston:

Q. Mr. Goode, I believe you stated that you had been an appraiser with your father since 1940; is that right?

A. That is correct; except for time in the service. But I was asked when I started, I believe.

Q. Yes. How long were you in the service?

A. 42 months.

Q. Did you study law at any time?

A. No, sir; just business law. I mean as a single course, but I never studied law.

Q. Now, you stated that in preparing for the trial of this case you obtained from the Land Title Company an abstract on property in the San Luis Rey Valley from Oceanside to Highway 395?

A. In that area, yes.

Q. Covering an area of approximately what size?

A. I think it was 16 square miles.

Q. What is the area of the San Luis Rey Valley between [1317] Oceanside and the point of intersection to which you referred?

A. That is an amount I couldn't state offhand, but it is less than that area, I believe, by quite a little. As to actual acreage within the valley itself?

Q. Well, I was thinking, what is the area of the land tributary to the San Luis Rey between Oceanside and the intersection of Highway 396, in the San Luis Rey?

(Testimony of Stanley E. Goode, Jr.)

A. I don't believe I can answer the question.

Q. Well, how did you select the particular 16 square miles within which to obtain the abstracts?

A. By judgment of the contours on that map. I attempted to select land that had similar contour characteristics running up that area, and the way their account books are set up, or, rather, their accounts are set up, you have to order on the entire section. You can't pick a portion of it.

Q. Then you did not take all the sections which are lying within the San Luis Rey Valley, within the area that you describe?

A. No, that is a fact.

Q. Isn't it true that the area in the San Luis Rey Valley between Highway 395 and Oceanside is in the neighborhood of 47 to 50 square miles?

A. Well, it would depend entirely on how you drew the boundaries of it. The square miles are indicated on the map, the sections are indicated, and the actual valley floor is indicated [1318] by the relatively white area, where there are no contour—that is, the contour lines are at distant points on the map.

Q. Now, how many deeds or instruments appeared in the abstract that you obtained?

A. Too many to count at the moment, but there are about 30 or 40 pages, and each page has 50 or 60 entries on it. Those are not all deeds, however. That is the entries on the abstract.

Q. Do you know how many deeds there are? Roughly, the percentage of it?

(Testimony of Stanley E. Goode, Jr.)

A. It is a very small percentage of the total on the abstract. I am not prepared to state what the percentage is.

Q. The document that you have in your hand is what was furnished you by the Title Company, is that correct? A. That is correct.

Q. How many deeds did you select for examination?

A. Out of this entire group, I believe—well, let's guess at 40. That is approximately right.

Q. Now, you testified that you also considered offers and listings. Where did you obtain that information? A. Offerings.

Q. Offerings and listings?

A. Some of the information was furnished to me in written form from—through John Cotton's office from the broker [1319] who had the listing; actually, it is the written listing itself. In another instance or two he furnished information from his office.

Q. Those were on matters then which had not been consummated? It was an offer to sell or an offer to purchase, but there had been no actual transaction based upon whatever price was quoted?

A. That is correct.

Q. Now, I notice on Exhibit DD the green circles L-11 to L-29 are upon a line which ends in two arrows pointing off the map. Now, what does that indicate?

A. That indicates that those leases are off the

(Testimony of Stanley E. Goode, Jr.)

map in that direction, that the map does not cover the area on which they are located.

Q. Are those leases on property within Camp Pendleton?

A. Yes, they are. All of the leases within L-11 to -29, inclusive, are within the confines of Camp Pendleton.

Q. And how far does Camp Pendleton extend in that direction?

A. To the Orange County boundary; the south city limits of San Clemente.

Q. What is that distance?

A. I think it is about 20 miles. I am not certain.

Q. Now, I noticed the same situation apparently exists with relation to L-2 in the green circle, and with 30 and 16 [1320] in the red circles.

A. Those are data items at considerable distance from the Sutro property. They are off the map. The same prevails as to items 14 and 17 on the right side of Exhibit DD.

Q. Yes. Now, on the map, the closest lease which you apparently considered is L-1; is that correct?

A. L-30.

Q. Yes, L-30, and L-9, and L-1; is that correct?

A. I think that is correct as to the indications on the map, yes.

Q. And L-30 is property owned by Mr. Zahn-hiser?

A. That's correct.

Q. And L-9 is within the boundaries of Camp Pendleton?

A. That's right.

(Testimony of Stanley E. Goode, Jr.)

Q. How far did you say that the Pankey ranch was from Mr. Sutro's property?

A. I don't recall what I stated.

Q. I believe you said it was five miles

A. I just said—I believe I said I would guess whatever the figure was, and I don't recall what it was. It is more than five miles.

Q. How much is it, as shown on that map?

A. It would be about 10 miles.

Q. And that map—that is a scale map, incidentally, is it not? [1321]

A. Yes, it is a U.S.G.S. scale map.

Q. And how far does the map indicate the distance from Mr. Sutro's property is to Vista?

A. Five or six miles. About six miles, or five, in that vicinity.

Q. And how far is it to Oceanside?

A. It would be seven miles; six to seven miles.

Q. It is less than that, isn't it?

The Court: Step down, if you want to.

(The witness does as suggested.)

The Witness: Five miles.

Q. (By Mr. Cranston): Do you know where Delphy Corners is?

The Court: What is that point?

Mr. Cranston: Delphy Corners.

The Witness: I am not familiar with it by that name.

Q. By Mr. Cranston: Or the other property, which is known as the Delphy Hill land?

(Testimony of Stanley E. Goode, Jr.)

Mr. Abbott: Can we have a little description of the property, counsel?

Mr. Cranston: I don't happen to have a little description here. It is property which I can indicate on the map. I am asking the witness if he is familiar with it.

Mr. Abbott: Well, it hardly seems fair to ask the witness about some common name. If he gives the full name of the owner [1322] of the ranch, that would be some indication.

Mr. Cranston: Very well.

Q. (By Mr. Cranston): Do you know the property of Jack Delphy?

A. There is some property—the man or the corporation owns more than one property, as I understand it, and I don't know if we are referring to the same one, but I do have knowledge of one 180-acre parcel. It is located east of the Pendleton-Fallbrook Road.

Q. And is that shown on your map?

A. That is L-1 on the map.

Q. That is not the property concerning which I was inquiring. By the way, is the Williams ranch that you appraised that you referred to in your qualifications, was that Orville Williams' ranch?

A. Richard Williams.

Q. Richard Williams? A. Yes.

Q. Was that formerly in a part of the Hampton Ranch?

A. He has assembled that from several trans-

(Testimony of Stanley E. Goode, Jr.)

actions, but I don't recall the names of the grantors in those transactions.

Q. Now, you have testified, Mr. Goode, that in your opinion there is a ratio between sales price and rental value. Does the ratio between the sales price and the rental value [1323] vary, at least to some extent, with the sales price when the land is being considered as agricultural land?

A. May I have the question again, please?

(Question read.)

A. There is a variation under differing conditions, if that is what you are referring to.

Q. That is, land might have a high value because of its particular location, which would make it advantageous for residence property, might it not, and the rental value would not be reflected in the increase in the sales price?

A. That is absolutely right. You couldn't apply it to different categories of land, other than a given agricultural neighborhood or district.

Q. Well, even within a given agricultural area, land might have one market value because of its peculiar adaptability for one feature, and the rental value would not bear the same relationship to that price as the rental value and the sales price of other land in that area?

A. Well, if there is any superimposition of a higher use, such as residential, then the percentage is distorted, just as it is in Orange County and Los Angeles County at the present time on all

(Testimony of Stanley E. Goode, Jr.)

agricultural lands in that neighborhood. So it has to be confined to the neighborhood in question.

Q. Now, you testified that you had found no instance of recorded leases in the transcript from the Title Company. [1324]

A. That is right.

Q. Now, I notice, according to the map, that there seem to be no indications where the same property was both leased and sold, as shown on Exhibit DD; is that correct?

A. The rentals and sales—the comparable rentals are indicated in green, and do not necessarily tie to the sale which is located in the same vicinity. The tie-in between the two is not indicated there on the map, but I do have information on properties which were both leased and sold.

Q. Well, any information you have on that is not reflected on the map even in having a green and a red circle connected together?

A. They are not connected. They were not drawn that way.

Q. I thought that the circles were supposed to represent the location of the property?

A. That is the general location of the property, that is correct.

Q. Are there any—

A. The general area of the valley. There was no attempt to draw on that map the perimeter of the property, and locate it with exactness. [1325]

Q. Well, for example, No. 25 on the map is located in the approximate area of the property which is referred to by that number, is it not?

(Testimony of Stanley E. Goode, Jr.)

A. Yes.

Q. And there is no lease number anywhere near to that? A. That is correct.

Q. Now, the same would be true of L-1? That is not the same property as 20?

A. That's right.

Q. Or 19?

A. Well, I would have to look to see. I do not believe so.

Q. In other words, the dots do not overlap?

A. No.

Q. Well, can you state any instances in which you have information as to rental value and as to sales value of the same piece of property?

A. L-3, -4, and -5, and sale 33 are within the range of valuation dates in question. I have information on——

Q. Those properties are lying to the east of Highway 395; is that correct?

A. Both sides of Highway 395.

Q. The leases are indicated on the east, and the sale on the west?

A. Well, that ranch contained 4,180 acres, and for that [1326] reason, if you drew it in, it would include the area that all of those are located in.

Q. Well, the leases would affect the entire area that was sold? A. No.

Q. Then the lease was merely a portion of the area sold? A. That's right.

Q. So that it would involve a question of interpretation as to the relative value of the part leased

(Testimony of Stanley E. Goode, Jr.)

to the whole? A. That's correct.

Q. Now, is there any other area where you have any information concerning the rental value and the sale value of any particular piece of property?

A. On sale No. 7, I have information as to the rental on that property.

Q. Is there any other instance where you have information on the sale and rental of the same property?

A. On sale No. 11, on one offering that is not shown on the map.

Q. Is that property which is outside the area contained within the map?

A. It is within the map, but was recently obtained, and since the map was prepared. And on lease No. 6.

Q. Is that a part of the Pankey ranch?

A. No, it isn't. [1327]

Q. There is no sale indicated on that?

A. There was one sale consummated, but I had an indication of value by the willingness of the owner to sell at a given price. And on No. 7.

Q. You have already referred to that, I believe?

A. Oh, I beg your pardon. And No. 10.

Q. That is sale 7 and lease 10?

A. No, it is an indication of value in connection with lease 10.

Mr. Cranston: Yes. That is, sale 7 and lease 10 are the same, I believe. That was the first instance which you gave where you did have the same properties.

(Testimony of Stanley E. Goode, Jr.)

The Court: He gave 7, 11, 6, and 10, according to my record. Is that right, Mr. Goode?

The Witness: I think Mr. Cranston is in error as to the relationship between 10 and 7. That is sale 7 and lease 10——

Mr. Cranston: Are the same property?

The Witness: No, they are not.

Q. (By Mr. Cranston): Then there is no connection between sale 7 and any lease?

A. On sale 7, I have information as to what that property was leased for.

Q. And is that the lease——

A. By it is not indicated on the map. In other words——

Q. Is that indicated by lease 10? [1328]

A. No, it is not. It is not indicated on the map by any number.

Q. Well, do you have any indication as to the sale price of the property shown by lease 10?

A. I beg your pardon, Mr. Cranston. You are correct. That is, the property that sold at sale No. 7 was rented—I have rental information under item 10.

Q. Then if I understand you correctly, you have information on the sale and rental of one piece of property, which is sale 7 and lease 10; you have information on the property shown as sale 11, on the property shown as lease 6, on a piece which you have not shown on the map, and then as to sale 33 you have information as to a lease of a

(Testimony of Stanley E. Goode, Jr.)

part of it, and those are the only instances in which you have information as to sales and rentals affecting the same property?

A. That's right, I believe.

Q. Then your generalization as to the ratio between sales and rentals is in essence based upon three cases?

A. Not entirely, no.

Q. In so far as this valley is concerned?

A. Not entirely, no.

Q. And whatever general background you have had?

A. And the general comparison, with 30 sales for comparison purposes, I was able to get a good idea of the value of the properties that were leased anywhere where I examined [1329] them.

Q. But you don't know of any lease on those properties?

A. That is not where it became a mathematical question of computing out the ratio of a sale and lease on the same identical property. It is limited to what you have mentioned here.

Q. Yes. Now, leases L-11 to L-29, and L-9, or, in other words, that would make twenty of the leases referred to, are all within Camp Pendleton?

A. That is correct.

Q. Now, did you obtain information on those leases in the period from 1946 to 1953?

A. Not for the entire period. They were not available to me on that basis.

Q. What period did they cover?

A. They covered the average that—they gave

(Testimony of Stanley E. Goode, Jr.)

me the average figures of what they had obtained on those for a net period of time.

Q. Did you see the leases?

A. No, I did not.

Q. Do you know what provisions the leases contained?

A. Yes. I discussed at some length with the Eleventh Naval District the terms of those leases.

Q. Didn't those leases contain restrictions on the use of water? [1330]

A. Yes, they did.

Q. What were those restrictions?

A. They varied from lease to lease, but they have a cancellation clause which provides that the Government can take the land at any time without payment for the crop loss, and that the water limitation can be one acre-foot in some instances for the season, and the Government can take possession on 30 days' notice at any time.

Q. And without payment for any crop damage?

A. And without payment for any crop damage.

Q. Isn't it the common practice under those leases in many cases for the tenant to rent three or four acres of land, and only irrigate one acre, putting the total water allotment for, say, three or four acres upon the one acre to grow the crop?

A. They sometimes do that, yes.

Q. That would affect the rental value of the property, would it not?

A. Yes, it would.

Q. And the cancellation clause would affect the rental value of the property?

(Testimony of Stanley E. Goode, Jr.)

A. Yes, and I so considered it.

Q. Now, the rental value of any particular piece of property, in so far as any particular crop is concerned, would depend in part on the water cost, wouldn't it? [1331]

A. Well, first of all, the terms of the lease——

Q. Yes. In each of these cases I assume that the other factors remain constant, that the rental value would depend upon the cost of the water in any particular case on any particular piece of land as to any particular crop.

A. It wouldn't depend on the water cost if the owner was paying it.

Q. If the tenant was paying it?

A. If the tenant was paying it, it would.

Q. And it would also depend in part, would it not, upon the labor cost for distributing the water to the ground?

A. Well, it is pretty hard to answer on a generalization of that type. It could be a factor.

Q. Well, in other words, if you would take, for example, \$10 per acre-foot of labor to put an acre-foot of water on the ground, that would be one factor which would affect the rent——

A. Only——

Q. ——if the same water could be put on at \$5 per acre-foot, the tenant could afford to pay more rent for that piece of property?

A. Assuming that he is doing the economic thing when he does that, and that is the highest and

(Testimony of Stanley E. Goode, Jr.)

best use of the land, and certain other variables, that would be the case, yes.

Q. Now, the rental value would also depend in part, would it not, assuming now that other factors remained the same, [1332] upon whether the system for placing water upon the property was so designed that large quantities of water could be placed upon the property very quickly in the event of hot drying winds or prolonged dry spells; would that not be correct?

A. I think the head of water could have an effect, yes.

Q. And also the availability of stored water?

A. Yes.

Q. Now, in these cases where you have investigated leaseholds, did you in each case investigate the cost of the water upon that particular property?

A. No, sir.

Q. Did you determine what the labor cost would be for distributing the water in each of those cases?

A. No, sir.

Q. Did you determine the pipe sizes and the storage capacities of each system, so as to determine whether large quantities of water could be placed upon the property in times of sudden heat or emergency?

A. I know something of the water facilities on some of these properties, but not to that extent.

Q. Well, without knowing those factors, how was it possible to make an intelligent comparison

(Testimony of Stanley E. Goode, Jr.)

of rental values of one piece of property with another.

A. Well, if you know the distance, just by looking on a contour map, that a man has to raise his water, and you have a [1333] knowledge of water levels at the point where he is taking his water, that in itself gives you an indication of what his water cost is. And by his operations, and by the operations typical in the district, the practical nature of the economics involved is best illustrated. In other words, if a good farmer does it, it is an indication that it is a sound operation.

Q. Well, there is more involved to the matter of water costs, isn't there, than the amount of the lift? Doesn't that depend upon the size of the pump, the number of hours per day the pump is operated, the stand-by charges, and those other items?

A. It depends on a lot more than just that. It depends upon the depreciation schedule in the pipeline and any other equipment that is involved, and the maintenance and repair of it, and so forth. It is quite a study to figure out the exact—it is actually an engineering study to figure out the exact water cost on a given piece of property where there is any sizeable installation.

Q. Now, in considering what the fair market value was for Mr. Sutro's property, did you consider the value of that property with the irrigation system which was in effect when Mr. Sutro purchased it, or did you consider it with an irrigation

(Testimony of Stanley E. Goode, Jr.)

system in effect such as is referred to in the exhibits in this case, with which I believe you are familiar? You have [1334] been in court during the entire case?

A. Yes. Yes, I know the exhibits you are referring to. I considered the property as it was, as it actually existed in 1946, not with the irrigation system which is shown on the exhibits.

Q. Then the opinion you have given does not reflect any valuation or any difference in rental value which would be accomplished by the installation of the system referred to in the exhibits concerning which Mr. Sutro has testified?

A. No, it does not.

Q. You have testified that pre-irrigation has been used in certain areas in California. What factors affect the efficiency or the desirability of pre-irrigation? That is, is pre-irrigation a practice which can be followed equally well in all types of soil under all types of conditions? A. No.

Q. What factors affect the desirability or undesirability of pre-irrigation?

A. Well, in effect, the pre-irrigation of a piece of land is nothing more than providing a guarantee of rainfall by irrigating when the rains don't fall, and other than for that factor of it, the characteristics of desirabilities and undesirabilities of land for dry farming prevails.

Q. Well, in other words, pre-irrigation merely insures that you will have water in the soil at the time the seed is [1335] planted?

(Testimony of Stanley E. Goode, Jr.)

A. That is correct.

Q. It assures nothing as to the presence of water during the time the crop is growing?

A. That's right.

Q. Now, in Mr. Sutro's soil—by the way, I believe you said you took certain soil tests?

A. Yes, I did.

Q. Did you find any Hanford soil?

A. Yes.

Q. Is pre-irrigation effective or desirable in that type of soil?

A. Yes, where circumstances demand it. It is more effective if it is a completely irrigated soil.

Q. Well, isn't Hanford soil of such a type that pre-irrigation would be a hazardous practice?

A. Not in my opinion. There are types of Hanford soils that that would be true on, but any soil classification has its fine textures and its coarse textures.

Q. Well, what type of Hanford soil would you consider Mr. Sutro's soil to be?

A. I believe it was classified as Hanford fine sandy loam.

Q. Would your opinion as to the desirability or effectiveness of pre-irrigation on this soil be affected by the statement [1336] in the pamphlet, "Soil Survey of the Oceanside Area of California, by R. Earl Storie, University of California, in charge, and E. J. Carpenter, of the United States Department of Agriculture," a bulletin published by the United States Department of Agriculture in

(Testimony of Stanley E. Goode, Jr.)

1929, No. 11, to the effect that—this is at page 19:

“Crops often suffer from drought where irrigation is delayed or is not practiced,” in Hanford fine sandy loam?

A. What portion of page 19 are you reading from?

Q. It is the last sentence of the first paragraph under the heading “Hanford Fine Sandy Loam.”

A. Yes, I agree with that statement.

Q. In view of that, would it be a good practice to pre-irrigate, which would mean that irrigation would later be prevented or delayed?

A. That does not refer to his statement when he says “Irrigation is delayed.” He is referring to an irrigated crop which has a certain moisture content in the soil, required for it to grow properly, and if you delay it, that soil type is going to drain readily enough so that it is going to wilt the crop, or if irrigation is not practiced, he is referring to dry farming.

I would not question anything that Dr. Storie says, because he is the best soil man in the United States, in my [1337] opinion; but I don't think he is referring to that question in the manner that you are.

Q. Now, what other factors would affect the desirability of pre-irrigation, aside from the character of the soil?

A. Well, your general climate, certainly, your distance from the coast, the amount of moisture in

(Testimony of Stanley E. Goode, Jr.)

the air, and, of course, weather conditions during the growth.

Q. Well, what about the slope of the soil? Would that have any effect?

A. It would have a bearing on it, too.

Q. Then considering this land, did you determine what the specific retention of the soil was?

A. No, I did not. I am not able to make a test of that type.

Q. Well, wouldn't you have to know the specific retention of the soil in order to determine whether it was of a proper character to be a subject of pre-irrigation? A. No.

Q. The specific retention means the amount of water the soil can hold against gravity by molecular attraction, doesn't it?

A. I am not sure of that. State that again, please.

Q. Isn't the specific retention the amount of water which the soil can hold against gravity by molecular attraction? [1338]

A. It sounds correct, but I wouldn't state with certainty. I think it is.

Q. Wouldn't it be essential to determine that before you could determine the effectiveness of pre-irrigation on any particular soil?

A. No, because if you have the soil type over here, and it is raising that many beans, that is a much better indication than any scientific test.

Q. But the question of the retention of the water would depend upon other factors than the type of

(Testimony of Stanley E. Goode, Jr.)

the soil? If the slope and the drainage were different, the climate was different, if the wind conditions were different, wouldn't those factors affect it?

A. They could all affect it. There are a million variables in any farm problem.

Q. And you did not consider those features in your consideration of pre-irrigation in this case?

A. I did not make any tests of that sort.

The Court: We might as well suspend now, gentlemen, until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, March 5, 1954, a recess was taken until 2:00 o'clock p.m., of the same date.) [1339]

Friday, March 5, 1954, 2:00 P.M.

STANLEY E. GOODE, JR.

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross-Examination
(Continued)

The Court: Proceed.

By Mr. Cranston:

Q. Mr. Goode, before the recess we had mentioned the leases on the Camp Pendleton property. What is the rental price paid on those Camp Pendleton leases per acre?

A. The first is the Magee lease, involving 1776 acres of land, which is rented on a quarter crop

(Testimony of Stanley E. Goode, Jr.)

share basis for the production of beans, and they raise 12 to 14 sacks of beans per acre per year.

Q. But do you have——

A. And that is the indication of the price for the product, because it is a crop share lease.

Q. Do you have any Pendleton leases which were leased for the growing of irrigated crops?

A. Yes, I have. The Rathwish lease is for \$45 per acre per year for row crops.

Q. Does that contain a limitation on the water usage?

A. Yes, it does. The first lease I gave you was a dry farm lease, the 12 to 14 sacks of beans. Other than that, [1340] you may assume that these all have limited irrigation water unless I specify otherwise.

The Beggs Brothers lease had \$45 per acre, for truck crops. They have a second lease at \$35 per acre.

Contreras leases for \$35 per acre for row crops. Singh pays \$41.20 for row crops.

Frazee pays \$45 per acre for flowers.

Q. How many acres are in that?

A. Forty acres. And also on another 150 acres, the same rate, the same purpose.

Q. And the same tenant?

A. And the same tenant. And also on an additional 40 acres. These, however, are separate leases.

Q. Are they all at that same price?

A. That's right. And there is one agricultural lease between the Government and the State of

(Testimony of Stanley E. Goode, Jr.)

California in connection with a seed potato program, involving 237 acres at \$16 an acre, which is reported.

Beggs Brothers, again, on 36 acres, \$40 per acre cash rent, row crops.

Seventy-two acres, Boehm, \$25 per acre. The same tenant again on 19 acres, \$40 per acre.

These are truck crops, unless I specify otherwise.

Castro, 34 acres, \$35 per acre.

Boehm, again, 29 acres, \$34 per acre cash [1341] rent.

The Spaulding lease is a 20 per cent crop share on barley. I don't have the production on that lease.

Singh, again, on 11 acres, \$45 per acre for row crops. And Singh——

Mr. Weymann: May I have the acreage of that again?

The Witness: Eleven acres. And Singh, again, on 55 acres, at \$45 per acre.

Beggs Brothers, again, on 102 acres, at \$45 per acre.

And that is the extent of the Camp Pendleton leases.

Q. What was the selling price of water in those cases? A. I don't know.

Q. That is added to the rental?

A. That is, I don't have the figures here. They told me—they discussed the water conditions with me at the Eleventh Naval District headquarters, but I don't have the figures. I believe it sold on an inch

(Testimony of Stanley E. Goode, Jr.)

—so much per inch per hour, if I remember correctly, on certain portions of it, but it differs on the varying leases.

Q. But there is an added cost for water, and this price does not include the water?

A. No, it does not.

Q. And these leases contain cancellation clauses?

A. All of them contain cancellation clauses.

Q. Now, how much water would be required for the growth of celery? [1342]

A. I am not prepared to state.

Q. The amount—I will put it this way—you stated, I believe, that the well, or one of the wells, I believe it was Well No. 2, on Mr. Sutro's property, produced 42 inches of water; is that correct?

A. I believe that's right.

Q. If my notes are correct, it is. A. Yes.

Q. And you stated that one inch was the quantity of water required for one acre of land?

A. Well, it depends on the crop, but, generally speaking, among the truck crop farmers in that area, they feel that one inch of water is required for one acre of land for the production of truck crops.

Q. And that was a miner's inch, I suppose, that you are referring to? A. Yes.

Q. Well, now, the amount per acre would depend upon the crop, would it not?

A. Yes, it would, very definitely.

Q. That is, celery, for example, takes considerably more water than many other vegetables?

(Testimony of Stanley E. Goode, Jr.)

A. The duty water on celery might be an additional acre-foot per year. I don't know. I am not prepared to state. [1343]

Q. Do you know what the water requirements are for any specific truck vegetable?

A. I have a whole publication on that in my office, but I don't have it with me, and I can't state what the duty of water is on the individual truck crops.

Q. In making your computations of rental values, then, did you consider the amount of water which would be required on the crops grown upon each parcel, and the availability or lack of availability of water sufficient to grow that crop?

A. May I have the question again?

(Question read.)

A. Where found, yes.

Q. Well, if you don't know how much water is required for a specific crop, how could you have considered that factor?

A. Well, the quickest way to get that information, when there is a time limitation on studies, is to ask the man who is farming it, and ask him what his water requirements are.

Q. But you don't know what the water requirements are in any of these particular cases that you have referred to?

A. Of the lease information on the map?

Q. Yes. A. Oh, yes, I do.

Q. What is the water requirement, for instance,

(Testimony of Stanley E. Goode, Jr.)

for [1344] the crops that are grown on the Singh ranch that you first referred to?

A. Oh, for a single crop?

Q. For a single crop.

A. I can't state with exactness on a single crop. However, I can state this, that on the Pendleton leases that I considered that every one of them was short of water, every one that I have indicated, except these dry farm leases, which, of course, had no water.

Q. Yes?

A. And I considered them in that light. But I also considered the fact that on these lands they were raising flowers, and truck crops, celery, cabbage, tomatoes, and the same general variety of truck crops that I discussed that the subject property was adaptable to, but under conditions at variance with the general market.

Q. And was all of each leased area being irrigated?

A. No.

Q. That is, a portion of the leased area would be irrigated and the balance would not be?

A. That is up to the owner, to spread the water as far as he cares to do so.

Q. As far as he wants to take a chance?

A. That's right.

Q. And it is true that celery cannot be grown with [1345] one acre-foot of water per year, is it not?

(Testimony of Stanley E. Goode, Jr.)

A. I would doubt it. I don't think you could grow celery on one acre-foot.

Q. Doesn't it take two and one-half acre-feet for a crop of celery?

A. By a crop—well, I couldn't state with certainty on that. It sounds about right to me, that it would take two to three acre-feet of water for one season, but I can't state from my own knowledge that that is the fact.

Q. Now, you discussed in your testimony the soil chart which you had made, and which is Exhibit EE, and also discussed the possibility of dry farming certain areas. I call your attention to the exhibit, and, in particular, to a small area marked 3.75, near the corner in the upper portion; to another small area near the right part of the page, with the notation 2.5; to another near the bottom of the page, marked 3.5; to another to the left of that, marked 2.3; to another marked 1.3; and ask if it is economically feasible to engage in dry farming on such small and widely separated parcels of property.

A. It is certainly not desirable, but rather than let the land lay completely idle under a program where it isn't being used on a cattle operation, that is about the best use that can be made of it.

Q. You testified that in considering the rental value [1346] of the Sutro property, you considered the fact that the fields or the areas were irregular in shape. Isn't it a fact that it is the size of the

(Testimony of Stanley E. Goode, Jr.)

field more than the shape which determines whether it is feasible to irrigate it or cultivate it?

A. Well, the shape has a bearing upon it also. The size, of course, is extremely important; the most important of the factors.

Q. In other words, an area of 100 acres with an irregular outline would be far more suitable for cultivation than a perfectly rectangular area of maybe one acre——

A. Well——

Q. ——for commercial purposes?

A. It could well be.

Q. Did you consider, in determining the rental value of this property, the relationship between the ordinary length of a row crop of irrigated vegetables, and the size or sizes of the fields adaptable for such use in the instant case?

A. May I have the question again, please?

(Question read.)

A. You are referring to irrigation runs rather than length of the crop? That is what you meant, the irrigation runs?

Q. The irrigation runs, yes. [1347]

A. I didn't make any layout of irrigation runs on the property, no.

Q. Now, returning to the amount of water required for an acre of land, in addition to varying with the crop, that would also vary with the type of soil, would it not?

A. Yes, it would.

Q. And with the efficiency of the distribution system?

(Testimony of Stanley E. Goode, Jr.)

A. Yes, and with the type of distribution system.

Q. Yes, that is, a distribution system through ditches or through temporary surface pipe?

A. Or sprinklers. It would vary.

Q. Yes. There would not be the same efficiency through those systems as, say, through a concrete or steel pipe system?

A. On the contrary, your water saving would be most under a sprinkler system.

Q. But it would not be under a ditch system or surface pipe?

A. Not open ditch as against enclosed pipe, but, naturally, there would be some loss along the way.

Q. Now, you stated that you considered, among other things, possible flood hazards, and referred to some possibility of a 20-year flood?

A. That's right.

Q. Now, if my memory is correct, there was a flood in [1348] California in the year 1916; is that correct?

A. Yes.

Q. And there was another flood in——

A. I can't testify to that of my own knowledge, obviously, but I understand there was one.

Q. Well, I did happen to be here at that time. And there was another one about 1936 and 1937?

A. '38, I believe.

Q. Yes, within that area. Then on the so-called 20-year flood cycle, the next flood year which could reasonably be anticipated would be somewhere along '56, '57, '58; is that correct?

(Testimony of Stanley E. Goode, Jr.)

A. That is without the scope of my activities, to predict when that is going to come.

Q. If you were predicting floods on a 20-year cycle, that is when the next flood would come, would it not?

A. The flood is not predicted on a cycle basis. It is predicted on the basis of odds, one out of twenty that it is going to be next year. I believe that is the import of the calculations, the engineering calculations on it. In other words, the Flood Control engineer that made these calculations did not say that we are going to have a flood a certain year, but that based on rainfall statistics available that it happens that every 20 years you will get this much rainfall in one year out of that 20, based on the best odds they can [1349] calculate.

Q. To go back again—this is beyond my own personal observation, but I believe the record will establish the fact, will it not, that the year 1895 and '96 was a very wet year in California. Are you familiar with that?

A. In 1887, I believe, was the big flood year, if I recall it correctly, and possibly that is the same flood to which you are referring, that is statistically used for the designing of flood control dams in Southern California.

Q. I think it was in the year 1895——

A. Whatever the year——

Q. ——but it was in the latter part of the Nineteenth Century? A. That is correct.

Q. Did you take into consideration the fact that a prudent man, purchasing property in 1946, with

(Testimony of Stanley E. Goode, Jr.)

that background as to the history of 20-year floods, for whatever that history may show, would have considered the advisability of proceeding on the assumption that there would be a period of some 10 years before another flood of that type could be expected, or did you consider that factor at all?

A. I considered that the man who would be purchasing the property at that time would become aware of the flood hazard and the odds of a flood taking place on the property through his investigation, and that from that he would reach [1350] his own conclusion, whatever it might be, as to whether or not to improve the property, and would consider that in a design of any sort and in any calculations which he might make as to amounts to be spent on the property.

Q. By the way, when were your investigations made on this property? A. Exact dates?

Q. Yes, please.

A. I was on the property first on February 1st of this year, and I was on the—I beg your pardon. On February 9th.

Q. That was the first time you were on this property? A. That's correct.

Mr. Abbott: Your Honor, we want to avoid any inference that the Government may have misled the Court. On the hearing in late January we testified that an appraiser was ready to appear in this cause, and he was, but it was not this appraiser. It was a man by the name of John Cotton, whose report is in our hands now.

(Testimony of Stanley E. Goode, Jr.)

Q. (By Mr. Cranston): And when else were you on there?

A. February 16th; February 22nd. Those were the times that I have been on the property, on those dates.

Q. And when was it that the pictures that are in evidence were taken?

A. On the 22nd of February, I believe. I beg your [1351] pardon. I took some of them on February 9th, and some on February 22nd.

Q. Now, was it on those same days that you interviewed the various witnesses as to whom you testified?

A. No, not restricted to these same days. That is, I did some interviewing these same days, and also did interviewing on other days. These were the days that I was on the subject property.

Q. I see. When did you see Miss Whelan, if you have any record of that?

A. February 22nd.

Q. And when did you see Mr. McDaniel?

A. I never did see Mr. McDaniel. I talked to him over the telephone, and talked to Mrs. McDaniel. I talked to Mr. McDaniel over the telephone twice. He was not available.

Q. I had understood from your testimony yesterday that you saw him.

A. I may have stated that I saw him in error. I talked to Mr. McDaniel, but I didn't actually see him. He is ill, you know.

Q. Well, I am not personally acquainted with him.

(Testimony of Stanley E. Goode, Jr.)

A. Well, he is not available for appointment.

Q. Now, did you see the Pankeys in that same time?

A. No, I didn't. That was the 17th of February, Bob and Ed Pankey both. [1352]

Q. Now, you did not at any time, however, see Mr. Jack Delphy? A. I did not.

Q. And you are not familiar with the rental which he is paying or receiving from his property?

A. On one of his properties I am, but I didn't get the information from Mr. Delphy.

Q. Now, would your opinion in any way be changed if you knew that Mr. Delphy had 100 acres of property in the valley rented in 1949 and 1950 for \$100 an acre?

A. It wouldn't change my opinion.

Q. Would it change your opinion if you knew that on hill land, with a water lift of over 350 feet, with the tenant paying all the pumping charges, Mr. Delphy rented land in 1951 and 1952 for \$90 per acre? A. It wouldn't change my opinion.

Q. Would it change your opinion if you knew that Mr. Joe Alvarado in 1949 and 1950 refused \$125 an acre for 30 acres of his land, because he wished to farm it himself?

A. I know nothing about that information, and I wouldn't change my opinion because of that.

Q. That would not change your opinion as to the rental of the land in the San Luis Rey Valley?

A. No. The offer to do so wasn't apparently consummated. [1353]

(Testimony of Stanley E. Goode, Jr.)

Q. Well, the landlord refused to accept it on the ground it was too small. The tenant offered it and the landlord would not accept it.

The Court: Is there a question now?

Q. (By Mr. Cranston): My question was: Would that affect your opinion? A. No.

Q. Would it affect your opinion to know that Mr. Joe Galegos paid Mr. John Katzenbach \$100 an acre for land near Mr. Sutro's in the years 1948, 1949 and 1950? A. No.

Q. Would it change your opinion to know that Mr. Ambrose DeBard rented land in the Fallbrook area at \$60 per acre, plus a charge of \$32.50 per acre-foot for water? A. No.

Q. Mr. Goode, in your opinion, what is the most valuable crop which can be grown as a truck product on truck land? Is celery the most valuable crop, or some other crop?

A. By most valuable, do you mean you are referring to the retail product per acre?

Q. The most productive to the grower.

A. In net profit or in gross?

Q. In the net profit.

A. I couldn't state. That depends on the season, and the skill of the manager, and many other [1354] things.

Q. Isn't it generally recognized that celery is the most profitable crop?

A. It is one of the very profitable crops, that is true, in the years when the celery price is right.

(Testimony of Stanley E. Goode, Jr.)

Q. Now, you referred in your testimony to the hazards of frost. Isn't it true that the mesa land, which you have indicated is 25.8 acres of Mr. Sutro's property, would be particularly frost-free land because of its elevation?

A. It is my opinion that it is not frost-free.

Q. Relatively speaking to the other land in the San Luis Rey area, is that not frost-free?

A. No.

Q. Of less subject to frost than the lower lands further down in the valley?

A. Well, when you qualify it with the lower lands, as to elevation, I would say that it is less apt to be frozen than the lower flat ground, and that would apply not only to the lower ground of the Sutro ranch, but the lower elevation of land in the San Luis Rey Valley.

Q. I would suppose that no land in Southern California is entirely frost-free?

A. That is an opinion which I share with you.

Q. 1913, and a few other years possibly demonstrated that.

Q. Now, you stated that the property in the present [1355] case, even with polluted water could have been used for growing corn for silage, and sugar-beets. Is that the highest and most productive use to which the land could be put if the water supply were not polluted?

A. Those crops could be grown on the property under either instance. In other words, on most agriculturral lands you don't pick out one crop and

(Testimony of Stanley E. Goode, Jr.)

raise that same crop year after year after year. You vary your crops, and those crops could have been used as rotation crops, with a definite agricultural purpose in mind at some point along the line, or they could have been raised under either polluted or unpolluted water for the same purposes.

Q. If the water were unpolluted, they would definitely not be the highest and best crops which could be raised upon the land?

A. That would depend again on the price of sugar-beets, for example, and the demand for those crops. You cannot state with certainty on agricultural land that a defined crop is going to be the crop that represents the highest and best use of that land, on a long-term basis, because there are many variables involved.

I don't think that silage corn on that represents the optimum use. I think that there is a very small chance that that would be grown if the water were unpolluted. And you had the variety of other crops which I previously mentioned [1356] to choose from. I think that is one crop that probably would not be selected if you had unpolluted water.

Q. You have also referred to the growing of vegetables for seeds upon this property. Are there areas in this vicinity where vegetables are grown for seed purposes, to your knowledge?

A. Well, an attempt was made, or, rather, a request for a lease was made on the Sutro property for that purpose previous to Mr. Sutro's ownership, for seed crop.

(Testimony of Stanley E. Goode, Jr.)

Q. Do you know of any areas where vegetables have been grown for seeds?

A. I am not familiar with seed crops generally. I know that they are occasionally grown, predominantly in the Oxnard-Ventura district. They do raise seed crops there. But I am not familiar with the extent to which they are grown in San Diego County.

Q. I see. Isn't it a fact that the vegetables that are grown for seed are raised farther north than San Diego County, and generally in regions which are more inland than the Sutro property?

A. Well, the seed crops I saw in Ventura were closer to the ocean than these.

Q. But you know of no such areas in San Diego County where vegetables are grown for seed?

A. I can't think of one. [1357]

Q. Now, with reference to the growing of flowers on this property, how much would be involved—what would be the expense for installing a sprinkler system for flowers? Did you compute that cost?

A. You could use a portable sprinkling system.

Q. What would be the expense of a portable sprinkling system? Did you compute that?

A. I didn't compute that cost.

Q. Did you compute the cost of installing a pump either in the creek or in the well?

A. I didn't compute the actual cost, no.

Q. When you referred to the fact that a prudent man would consider the desirability of lifting the water in Pilgrim Creek five to ten feet, and then ir-

(Testimony of Stanley E. Goode, Jr.)

rigating the bottom lands, did you consider the fact that the natural flow would not be rapid enough to be applied to the land economically, unless some diversion and storage facilities were established, so that the water might be stored and then placed upon the land in larger quantities?

A. I don't think that is true, Mr. Cranston.

Q. What allowance did you make for the flow of the creek, then?

A. I believe I testified this morning as to the flow in inches that was coming down the creek.

Q. You testified, I believe, to 30 inches. [1358]

A. Plus the 80 inches of water that was being dumped into the creek.

Q. Yes, but the natural flow, without the 80 inches.

A. Oh, you are talking about the natural flow?

Q. Yes.

A. Well, I assumed if the natural flow was captured and pumped to that extent, that it could be done in the same manner that Mr. Ikemi had previously done.

Q. But you did not consider whether such a method was economically feasible and efficient?

A. Oh, it is very definitely economical.

Q. To capture the 30 inches alone?

A. Yes.

Q. How many acre-feet per day is that?

A. Let me see.

Q. Well, if this is going to be a long computation, I don't want to take the time of the Court.

(Testimony of Stanley E. Goode, Jr.)

A. It is a mathematical computation. It isn't a long computation, but the formula slips my mind. That is what I am researching here for.

Q. In any event, you had not made that calculation?

A. I have made a lot of calculations on this water, but I can't recall to mind at the moment.

Q. Well, to return to the question of the flowers, Mr. Goode. [1359]

Mr. Abbott: Let's let the witness answer the question that has been put to him.

The Court: He started in, so I guess we had better let him finish.

The Witness: That was 30 inches?

Q. (By Mr. Cranston): Yes.

A. Fifteen acre-feet in 24 hours I believe is correct. You requested an answer in acre-feet, did you not?

Q. Yes. Would that be 15 acre-feet in 24 hours? A. I believe that is correct.

Q. Then if your previous computations were correct that 30 inches of water would be sufficient for irrigating 30 acres of land, that would be placing half an acre-foot of water on each acre of land every day. My understanding of the testimony this morning was that one inch of water was the amount required for one acre of land.

A. If—now, let me see if I can express it in a different way. I have a conversion table in here somewhere, if I can find it, and it will give me the answers without any computations.

(Testimony of Stanley E. Goode, Jr.)

Sixteen acres is the amount of—I beg your pardon. You asked for acre-feet?

Q. Yes, the number of acre-feet.

A. Sixteen acre-inches. That is why I was giving you the wrong answer. [1360]

Mr. Cranston: I thought you had Pilgrim Creek into quite a stream.

The Court: That was the inflationary period.

The Witness: That is correct, your Honor.

Q. (By Mr. Cranston): That would be then 1.4 or 1.5 acre-feet per day? A. That's right.

Q. That would be somewhat less than 400 gallons a minute, would it not?

A. Well, if we are dealing with an 80-inch stream to start with——

Q. Yes.

A. ——that should be 720 gallons per minute.

Q. I am talking about the 30 inches, which was the natural flow of the stream.

A. That would be 270 gallons per minute.

Q. 270 gallons per minute. An irrigator in a day can handle far more than 270 gallons per minute, can he not?

A. Well, that will depend upon the system that he is using. That is generally true.

Q. An irrigator can handle up to 1750 or 1800 gallons, can he not?

A. Well, it depends upon the crop, and the layout, and a good many things. In the San Joaquin Valley one irrigator can handle a section of land up there. [1361]

(Testimony of Stanley E. Goode, Jr.)

Q. In other words, the natural flow of Pilgrim Creek would be a relatively small flow, unless it were stored and then placed upon the land in larger quantities, would it not?

A. Not too small to use. Not too small to be well adapted to use on a sprinkler system.

Q. Now, the sprinkler system would require the installation of equipment in order to put the water under pressure, would it not?

A. You can pump against a sprinkler system by dropping a siphon in the creek.

Q. Yes, but you said you had not computed the cost of such a system?

A. No. It is a portable system. There wasn't anything of that nature installed that was a part of the realty during this period of time.

Q. Now, do you know of any areas near Mr. Sutro's property, which are being rented for the growth of flowers, where the area involved is equal to the irrigable land in the Sutro property?

A. Yes, I believe I mentioned a lease or two in here on Camp Pendleton. One of them was over 100 acres, I believe.

Q. But that was subject to the restriction on the use of water, and presumably not all of it was actually placed to flowers, if I recall your testimony.

A. That's right. It may have been a reduction from [1362] 100 acres, but I think it would be substantially the greater part of it.

Q. Now, flower growing is quite a specialty, isn't it?

(Testimony of Stanley E. Goode, Jr.)

A. I think it would be classed as a specialty, along with any truck crop is a specialty.

Q. Well, flower growing is subject to more hazards really than a vegetable truck crop, is it not?

A. I don't know.

Q. Now, you referred to factors which might have been considered by a prudent man, and you said that he might have considered converting the ranch to a cattle ranch or a dairy; is that correct?

A. That's right.

Q. Well, under what conditions could the ranch have been converted to a dairy with a polluted water supply?

A. Not with the dairy operation on the ranch itself, but by feeding dairy cattle on pasturing, that is, cows that were not being milked actually. But every dairy has a considerable area of land that it uses besides the actual land surrounding the dairy itself.

I should not say every one. There are all types, and closer here to the city it is more apt to be located on a 20-acre parcel, but generally they require acreage in excess of their dairy layout itself.

Q. Did you consider the cost which would be involved [1363] in such a conversion program?

A. There wouldn't be any cost involved in the conversion to a beef feeding operation, which it would in effect be, or feeding dairy cattle instead. It would be a matter of planting pasture, like you would plant any crop.

(Testimony of Stanley E. Goode, Jr.)

Q. And what about the irrigation of the pasture?

A. It could be done with a portable sprinkling system.

Q. But you say you have not computed the cost of such a system?

A. Well, it is like a tractor. I didn't compute the cost of the tractor either.

Q. So you have not computed, in any event, what cost would be involved in distributing the water under any of the systems which you have proposed?

A. The actual cost in so much per acre-foot? Is that what you are referring to?

Q. Yes.

A. No, I haven't engineered a specific water system on that property.

Q. Did you compute what the cost would be to drain or reclaim the alkali land which you enclosed in the pinkish border in your exhibit?

A. Not in details of so much for pipe, and so much for labor, and that sort of thing, no.

Q. That is, you do not know what the total cost would [1364] be, or any of the ingredients of that cost?

A. I have a pretty good idea of what it would cost based on similar installations on other properties on a per acre installation cost basis.

Q. But you did not compute it in this case?

A. Not other than on a per acre cost.

Q. Now, I believe that you testified that one

(Testimony of Stanley E. Goode, Jr.)

thing which you might have considered, or that you believed a prudent man would consider would be to irrigate the 56 acres of flat bottom land, and the 25.8 acres of mesa land, and to use the 18 acres which had been alkaline and the balance for pasture in grazing without constructing any fences; is that correct?

A. That is correct. And may I explain my answer?

Q. Yes, would you do that, please?

A. During periods of time when these lands were not planted to a crop that is destructible by the cattle—in other words, periodically the land is going to be tilled and there will be nothing on it in the way of a growing crop, the cattle can be turned into that entire ranch without the construction of any fences at any point, and the forage value that lies in the dry pasture and that alkali wet pasture area could be taken advantage of in that manner, but it would not be practical to attempt to fence off these areas, because the cost of the fence to go around these pasture [1365] areas would exceed the value of the land that they would enclose.

Q. That would depend upon how long the fence was to stand, would it not? Or do you mean to say that the cost of the fence to surround the area would exceed the total value of the land, the value of the fee interest in the land?

A. The pasture land, that is right, if you ran an irregular fence around this entire area.

Q. What, in your opinion, would be the cost of

(Testimony of Stanley E. Goode, Jr.)

such an irregular fence? Did you compute that cost?

A. I had no specifications, but I think your minimum fence would cost you probably 20 cents a foot. That is a minimum fence.

Q. And in your opinion, the pasture land is not worth placing that fence around it?

A. That's right.

Q. But isn't it true that the best procedure for use of the pasture land is to rotate the use, that is, to have whatever animals are in the pasture moved from field to field periodically, and not to leave them in the same area continuously?

A. If you are talking about a 500 or a 1000 cow spread, that would be the case, but not on a ranch of this type.

Q. But to make the most efficient use of it as pasture [1366] land, would that not be required?

A. I don't see how that would become a factor in the operation of this property, unless you were converting the whole ranch into an irrigating pasture operation, wherein you might put some fencing in in connection with that.

Q. That would be the way to make an efficient use of it as pasture land?

A. If the entire ranch were being converted to irrigated pasture.

Q. To return to the question of the pre-irrigation of crops, the pre-irrigation is no insurance against lack of rainfall after the seed has been planted; is that correct? A. That's correct.

(Testimony of Stanley E. Goode, Jr.)

Q. What would be the gross income per acre if this property were diverted to pasture land? Did you compute that?

A. It would depend upon the type of operation. First of all, if it were an owner-managed pasture, he would rent on the basis of probably \$1 per 100 pounds of animal per month, and if he had two 500-pound critters on it, say, 1000 pounds of animal on there each month, that would be a rent commensurate with \$10 per month, and if it was an 8 months season, it would be \$80 a year rent which he would collect on the amount of land which those critters could graze on, and that on pasture of the best type that would be grown on the subject property in the flat would be approximately one acre of [1367] ground, so that his gross income for the use of that pasture during a period of one year or season, there having to be a rest season in the winter, would be about \$80, out of which, of course, he would have to pay his own expenses in connection with the irrigation and management of the pasture.

That is one method by which he could realize a rental, an absolute net rental to himself, I think, in the neighborhood of \$40 an acre. And if he didn't care to do that, he could turn around and actually rent the land itself to another party doing the same thing that he would be doing under those circumstances, or possibly running his own cattle on there for his own profit, who would pay him the sum of \$40 per acre cash rent for that purpose.

(Testimony of Stanley E. Goode, Jr.)

Q. Do you know of any leases in that area for pasturage purposes of \$40 cash rent?

A. Yes, I do.

Q. How far away?

A. Right up the San Luis Rey River Valley. I can't tell you the exact distance. Jack Carrillo has a 7-year pasture lease on the Cameron property at \$40 per acre per year cash rental.

Q. Where is that property?

A. It is Item 34 on the map. I beg your pardon. Item 8.

Q. That is up above the—— [1368]

A. That is at Bonsall.

Q. At Bonsall. And that is irrigated pasture?

A. That is. The tenant put in his own pasture, and is paying his own water costs, and has all the——

Q. How many acres are involved in that?

A. I don't have the acreage on this sheet, but I believe it is 180, or thereabouts, if I remember correctly.

Q. That is in bottom land; is that correct?

A. A portion of it is, and a portion of it is hill land.

Q. Do you know of any others in that area?

A. That is the only cash pasture rental that I know of. But I do know of pasture lands—that is, cash rental on irrigated pasture. But I know of pasture lands where the owner manages the pasture, and also dry pasture.

Q. Now, in making your computations and con-

(Testimony of Stanley E. Goode, Jr.)

sidering what should be done, did you take into consideration the fact that in 1946 apparently no one knew, at least Mr. Sutro did not know, how long the condition would remain; in other words, that from time to time, as set forth in the transcript at the earlier hearing, which you stated you had read, there were numerous promises from the Navy that conditions would be changed. In other words, is your opinion based upon our present knowledge that the condition would prevail over a period of time, or is it based upon the idea that the condition [1369] was momentarily expected to cease?

A. I thought I had testified pretty thoroughly on that point, as to the uncertainties that I considered in connection with this property, and the various effects that it had on the property, and there was no hindsight involved in any of my calculations.

Q. Do you consider Miss Whelan, to whom I believe you spoke, an experienced operator?

A. I have never met Miss Whelan except on that one day, and talked to her there. Judging from what she told me, I would say that she had been in business a long time. I know nothing further than that about her.

Q. Do you know anything of Mr. McDaniel's operations?

A. Only that he has owned and operated extensive lands in the area, but that's all.

Q. For a considerable period of time?

A. I believe he has been there for a number of years.

(Testimony of Stanley E. Goode, Jr.)

Q. And so has Miss Whelan? A. Yes.

Q. If Miss Whelan and Mr. McDaniel were unable to make any large amounts on the Sutro property during the period in question, what leads you to believe that anyone else would have paid \$40 per acre for the property for pasture purposes?

A. If that land produced the amount of alfalfa that Miss Whelan told me she grew on it, it would amount to more [1370] rent than I have put on it.

Q. But in view of the returns which are here in evidence, what is the justification for that belief?

A. I haven't the returns, to my own satisfaction. I sat here in the courtroom, and I heard things here and there said about the amount of income, and about it was this year or that year that it was paid in, but I couldn't assemble from that information an accurate study of what the income was.

Q. You have no information that would lead you to believe that Miss Whelan or Mr. McDaniel were not experienced operators, have you?

A. Not at all.

Q. Would the conduct of Mr. Sutro in leasing the property to them appear to you, therefore, to be the conduct of a prudent man?

A. I have no idea of his leasing negotiations with them.

Q. Did you consider any course which might have been evolved which would be any more prudent than to lease to two operators such as Miss Whelan and Mr. McDaniel?

A. Are you asking me to give you a reading on

(Testimony of Stanley E. Goode, Jr.)

those two tenants, as such? Is that the idea? I am not familiar [1371] enough with them to answer that question.

Mr. Cranston: That is all.

Redirect Examination

By Mr. Weymann:

Q. Mr. Goode, you were asked concerning the investigation of the rentals paid on the Pendleton leases. Did you use those leases in arriving at the rental value of the subject property as polluted?

A. Yes.

Q. Did you use those rentals paid at Pendleton in arriving at your estimate of the rental value of the subject property unpolluted? A. No.

Q. In your valuation did you assume that there was any difference in the acreage which could be irrigated, as between the use of polluted and unpolluted water?

A. The acreage under irrigation would be the same in either instance, with the exception that if the operator chose to dry farm, or, to pre-irrigate portions of it, it would be in the form of a pre-irrigation rather than a complete irrigation, but the same number of acres would be irrigated under either circumstance of polluted water or unpolluted water.

Q. That the same crops could be grown, except those which were garden truck and edible vegetables?

A. Those which I mentioned, yes, sir. [1372]

(Testimony of Stanley E. Goode, Jr.)

Q. Those which you mentioned. Now, where the tenant of a farm pays the water bill, would the availability of 80 inches of water from Pilgrim Creek be a benefit to the user, regardless of whether it was polluted or not?

A. Very definitely; as long as it was referring to crops which could be grown on that property with polluted water, the additional gift of 80 inches of water in Pilgrim Creek, which could be merely lifted out of the creek and distributed over that flat land in sufficient quantity to practically gravitate to that 80 acres, would be very definitely a consideration that a tenant would take into mind and would make it a more desirable property for him to rent.

Q. And that 80 acres was in addition to the natural flow of Pilgrim Creek?

A. The 80 inches was in addition to the natural flow, yes, sir.

Q. The 80 inches. Now, reference was made to the possibility of the use of a portable irrigation system. Do you know if in such instances the tenant customarily furnishes the portable irrigation system?

A. In many instances the tenant furnishes the portable irrigation system.

Q. You were asked about the Pankey leases. Did you have any information, or secure any information, as to the availability of water on those properties? [1373]

A. I stood by the wells when they were running, and looked at the drawdown gauge, and I know

(Testimony of Stanley E. Goode, Jr.)

what their pumping levels were. I have previously computed the water cost on the ranch, and I discussed with Mr. Pankey the engineering report which he just recently received on the water costs on that property.

Q. And, incidentally, that is one of the properties which you have previously appraised, is it not?

A. That is correct.

Q. You were asked about pre-irrigation and the question of rainfall. Is any rainfall required on pre-irrigated beans, for example? A. No, sir.

Q. That is all. Oh, one more question, Mr. Goode.

How does the cost of putting water on the land effect the diminution in market value?

A. May I have the question again, please?

(Question read.)

The Court: That isn't a very clear question to me.

The Witness: It isn't to me either, your Honor.

Mr. Weymann: I will withdraw that question, then.

Q. (By Mr. Weymann): How does the cost of putting the water on the land effect the diminution in the rental value of the land?

A. I think—I believe I know what you are referring [1374] to there. There was no—because the extra flow of 80 inches of additional water in Pilgrim Creek was there at a very low cost, a lower cost than any other water on the property, I didn't correspondingly alter my estimate of the fair rental value. If I had, my estimate of the rental loss

(Testimony of Stanley E. Goode, Jr.)

would have been less than \$10,000, instead of the figure of \$10,000.

Mr. Weymann: I think that is all.

Recross-Examination

By Mr. Cranston:

Q. Mr. Goode, are you aware of the fact that both Miss Whelan and Mr. McDaniel, at the time they leased this property, owned portable irrigation systems?

A. I had no knowledge of that, whether they had portable irrigation systems or not.

Q. You did not know that they did not deem it advisable to install the system?

A. I question it.

Q. You stated that where the tenant pays for the water, the availability of additional water would be a benefit, even though the water was not polluted. By that do you mean it necessarily follows that two acre-feet of polluted water will produce a more profitable crop than one acre-foot of unpolluted water?

A. I don't follow the question.

May I have that again, please, with a little bit ahead [1375] of it there, please?

(Question read.)

Mr. Cranston: The question contains a "not" that should not have been in the question. The question should be "even though the water was polluted."

The Court: I think you had better reframe the question.

(Testimony of Stanley E. Goode, Jr.)

Mr. Cranston: Yes, I had better rephrase the question.

Q. (By Mr. Cranston): You stated that where the tenant paid the water, the availability of additional water would be of benefit to him, even though the water was polluted. My question is: Does that mean that, say, two acre-feet of polluted water, in your opinion, will produce crops which are worth more than one acre-foot of unpolluted water?

A. The polluted water would be a very definite advantage in case the man was using it for a crop which was permitted under the health laws to be grown there. He would rather have two acre-feet of polluted water than he would one acre-foot of pure water, or unpolluted water, I will state, that is, if he were growing alfalfa, or pasture, or sugar-beets, or these other crops that I have previously mentioned.

Q. But if the available supply of unpolluted water, without the addition of the polluted water, was sufficient to irrigate the property, then that condition which you have referred to would not prevail; isn't that correct?

A. I think my rental estimates themselves explain my [1376] position on that. If I didn't feel that way, I would not have any rental loss at all on the subject property.

Q. In other words, if the available supply of unpolluted water is sufficient, adding the addition of polluted water is a detriment rather than a benefit?

(Testimony of Stanley E. Goode, Jr.)

A. Let me have that a little slower, please.

The Court: The reporter will read it.

The Witness: A detriment, according to my figures.

Mr. Cranston: That is all.

Mr. Weymann: That is all. May Mr. Goode be excused?

The Court: Yes.

(Witness excused.) [1377]

Mr. Abbott: Mr. Vaughan.

JOHN L. VAUGHAN, JR.

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: John L. Vaughn, Jr.

The Clerk: V-a-u-g-h-n?

The Witness: V-a-u-g-h-a-n.

The Court: I think we will take our recess now for a few minutes.

(A short recess.)

The Court: Proceed.

Direct Examination

By Mr. Abbott:

Q. What is your name, sir?

A. John L. Vaughan, Jr.

Q. Where is your residence, Mr. Vaughan?

A. Los Angeles.

(Testimony of John L. Vaughan, Jr.)

Q. What is your profession?

A. I am a valuation engineer and appraiser.

Q. By whom are you employed?

A. Marshall & Stevens, of Los Angeles, California.

Q. What is your educational background, Mr. Vaughan?

A. I studied electrical engineering at the University [1378] of Virginia, and I took some Service school courses during my period in the Service; studied property valuation at the University of California. I am a registered professional engineer in the State of California.

Q. Will you state your experience in the professional field in which you are now employed?

A. Yes, sir. Prior to the war I was a valuation engineer with the American Gas & Electric Service Corporation, New York City, involving principally utility valuations. Then I was in the Air Force for approximately 41 months. Immediately after being released from the Service, I came to Los Angeles as engineer in charge for the eleven western states of all work done for the consulting engineering firm of S. W. Marshall, Jr., of Dallas, Texas.

I remained in that capacity for approximately a year and a half, and then I was with Henry Babcock, consulting engineer of Los Angeles for approximately a year, and in the spring of 1948 I took my present position with Marshall & Stevens, in charge of the special appraisal department, and have been in that capacity ever since.

(Testimony of John L. Vaughan, Jr.)

Q. Calling your attention in particular to the year 1946, were you engaged in appraising construction costs at that time? A. Yes, sir, I was.

Q. In what area? [1379]

A. Throughout Southern California.

Q. Did you in the year 1946 appraise construction costs in the vicinity of Oceanside, California?

A. I appraised—in the year 1950 I made an appraisal retroactive of construction costs in the San Juan Capistrano area, and in the general vicinity down there.

Q. And does that general area include the area in which the Sutro ranch is situated?

A. It is in the general area, yes. [1380]

Q. Is Marshall & Stevens a nationwide firm?

A. Yes, sir. They have offices all over the United States and Canada. They are also publishers of the Marshall Valuation Service, the Stevens Valuation Quarterly, and the Residential Evaluator, which are national publications.

Q. Do they compile statistical data relative to construction costs? A. Yes, sir.

Q. And is that statistical data published in any national publication?

A. It is reviewed and incorporated in the Engineering News Record, in the Annual Construction Cost issue, both on the Marshall & Stevens cost trends, and on the Marshall & Stevens equipment, machinery and equipment cost indices.

Q. Will you state, briefly, what recent experiences you have had in the appraising of replacement costs of improvements to real property?

(Testimony of John L. Vaughan, Jr.)

A. Yes, sir. It included such diversified properties as the Subway Terminal Building in Los Angeles, the May Company properties, the Broadway department stores; and getting into machinery and equipment, has included the Grand Central Aircraft Company, McCullough Motors, Harvey Machine Works; into water works it has included the San Juan Capistrano Water Company, the La-Habra Heights Water Company; that is primarily in construction, and numerous other smaller [1381] appraisals, machine shops, and various other smaller businesses such as that.

Q. Have you recently had an assignment with respect to a replacement cost appraisal of the San Juan Capistrano Water Works?

A. Yes, sir, I did a complete study on that; in fact, two different appraisals for submission to the Corporation Commission, one of which was a replacement cost new as of 1951, and the other was an analysis of prior construction costs of the company, for the purpose of bringing them up to date, and to present other data on them, which was an analysis of all of the costs from 1920 to 1951.

Q. I note some difficulty in catching your testimony. If you would slow down just a little bit, Mr. Vaughan, it might be convenient for all of the people who are attempting to note what your statements are. Did the project last described involve use of statistical data to reconstruct construction costs in prior years?

A. Yes, sir, it did.

Q. Have you been asked to appraise the difference in construction costs of certain properties de-

(Testimony of John L. Vaughan, Jr.)

scribed in exhibits in evidence in this cause, as between the first half of 1946 and the month of July, 1952?

A. Yes, sir, I have.

Q. What steps did you take in the preparation of that [1382] appraisal?

A. I first examined those exhibits which were available, to get an idea of the scope of the work. I then paid a visit to the subject property for the purpose of inspection and examination of terrain. I was accompanied on that trip by one of our junior engineers, who made a survey. I had interviews in the Oceanside area, attempting to get data relative to construction costs in the two periods, labor costs, material costs, and so on, for the purpose of comparing with our construction cost trends. I also reviewed an appraisal, I believe prepared by Mr. Cotton, which incorporated considerable data on the material and labor costs in the area in the periods in question.

With the assistance of other personnel in the office, I made, as far as possible, a take-off of the quantities involved in the irrigation system and then the buildings under consideration.

After the appraisal that was prepared by the American Appraisal Company was introduced in evidence, I reviewed that, and found that the quantities were apparently in considerably more detail, and considerably more accurate than we had been able to obtain from the sketchy information available to us. For that reason I relied, so far as quantities and descriptions of the intended construction

(Testimony of John L. Vaughan, Jr.)

was concerned, I relied rather heavily on the data contained in that appraisal. [1383]

Q. Well, do the exhibits in this cause contain sufficient data for you, without further data, to prepare the cost analysis which you have prepared?

A. Yes, sir; that is, within reasonable limits of accuracy.

Q. If that is the case, to what extent were you assisted in preparing your estimate by the data reported by the American Appraisal Company?

A. Particularly, insofar as the dams and irrigation system was concerned, in that the exhibit showed that there was a dam planned.

Well, you could scale the approximate length of the dam, but there was additional information which was incorporated in the America Appraisal Company's report, which I don't think was available from the exhibits, at least not to the best of my knowledge, and there was some additional detail on the piping, and the lengths of it, which apparently were taken off in considerable detail by the American Appraisal Company.

On the assumptions as to quality of materials, and actual materials in the buildings, other than the residence proposed on the property, apparently the American had more access to more information than was contained in the exhibits available to me.

Those were the main items on which I relied on their figures. [1384]

Q. Well, all of the exhibits in this cause were made available to you, were they not?

(Testimony of John L. Vaughan, Jr.)

A. That's correct, yes, sir.

Q. Were you assisted in preparing your opinion by any statistical indices or statistical data in the possession of your office? A. Yes, sir.

Q. Will you describe, briefly, what that information so used consisted of?

A. I have charts which come from the Marshall Valuation Service, and schedules of replacement costs for various years for construction and for equipment; one of them headed "The cost indices for the years 1946 to 1953," covering all types of equipment, and detailed comparative replacement cost multipliers for the period 1926 through 1954, as prepared by our research department.

I compared those with the local data which we had been able to get in Oceanside, with the local data secured by Mr. Cotton, and found them all in very close agreement, and used these indices for the purpose of converting my 1952 cost estimates back to the 1946 date.

Q. Now, did that statistical data available to you, representing as you testified actual construction costs, automatically include premium payments to labor during the period which it covers? [1385]

A. Well, it would include all such overtime costs as normally went into construction in that period.

Now when you speak of premium, we refer to premium costs as such things as happened during war years, as black market, and money paid on the side, and things like that, which did not go into the face value of the contracts.

(Testimony of John L. Vaughan, Jr.)

Q. Well, you have answered the question as I should have phrased it. I should have used "overtime" instead of premium.

A. So, inasmuch as our trends, to the best of my knowledge and belief, are based on actual contracts and construction costs of completed projects, I think that our trends do reflect all such normal costs as overtime, which was customarily being paid in the period under consideration.

Q. If in lieu of using the indices and data you have described, one used a straight time labor rate scale, would he secure a different opinion?

A. In all probability, yes, sir.

Q. And would the difference in reconstruction costs, as between July of 1952 and the first half of 1946, be more or less as a result of using a straight time labor index?

A. The difference would be greater, because it would give an indicated cost—a lower indicated cost in 1946.

Q. Now, sir, I will ask you structure by structure what the 1946 first half costs of the structures in question [1386] were, what the 1952 July costs were, and what the difference between those two figures is.

First, with respect to the ranch house, what in your opinion was the 1946 replacement cost?

A. \$23,973.

Q. What was the July, 1952, replacement cost?

A. \$39,462.

(Testimony of John L. Vaughan, Jr.)

Q. What was the difference between those figures? A. \$15,489.

Q. With respect to the repair show, what was the 1946 replacement cost? A. \$7,983.

Q. What was the 1952 replacement cost? A. \$13,140.

Q. And the difference? A. \$5,157.

Q. With respect to the guest house, what was the 1946 cost? A. \$2,592.

Q. What was the 1952 cost? A. \$4,267.

Q. And what was the difference between those two figures? A. \$1,675.

Q. With respect to the implement shed, what was the [1387] 1946 cost? A. \$2,007.

Q. And the 1952 cost? A. \$3,304.

Q. And the difference? A. \$1,297.

Q. With respect to the help house, what was the 1946 cost? A. \$4,650.

Q. And the 1952 cost? A. \$7,654.

Q. And the difference between the last two figures? A. \$3,004.

Q. With respect to the storage shed, what was the 1946 cost? A. \$3,776.

Q. And the 1952 cost? A. \$6,215.

Q. And the difference? A. \$2,439.

Q. With respect to the sewage disposal system, what was the 1946 cost? A. \$1,650.

Q. What was the 1952 cost?

A. \$2,750. [1388]

Q. And the difference was how much?

A. \$1,100.

(Testimony of John L. Vaughan, Jr.)

Q. With respect to the domestic water supply system, what was the 1946 cost? A. \$3,993.

Q. What was the 1952 cost? A. \$6,572.

Q. And the difference? A. \$2,579.

Q. With respect to the irrigation system, did you follow the division between 1946 installations and 1952 installations which was followed by the American Appraisal Company?

A. Yes, sir, I did.

Q. Now, what was the combined 1946 and 1952 price or cost following that division?

A. \$37,016.

Q. What was the 1952 replacement cost?

A. \$56,651.

Q. What was the difference? A. \$19,625.

Q. With respect to the machinery and equipment listed under that head in the American Appraisal report, what was the 1946 new cost?

A. \$25,195. [1389]

Q. What was the 1952 new cost?

A. \$34,297.

Q. And what is the difference?

A. \$9,102.

Mr. Cranston: Could you give me those last figures again, please?

The Witness: The 1946 replacement cost on machinery and equipment, \$25,105; 1952, \$34,297; and the excess cost, the difference between them, \$9,102.

Q. (By Mr. Abbott): By machinery and equipment, you are speaking, are you not, of the items

(Testimony of John L. Vaughan, Jr.)

listed under the complete head of shop machinery and equipment?

A. Yes, sir, that is correct.

Q. On the American Appraisal report?

A. Would you like the totals on that, sir?

Q. Oh, I don't think they will be required. Have you an opinion as to why the figures reported by you differ from those reported by American Appraisal?

A. I believe that the 1952 replacement cost figures, as established by my report and by American's, are not too different. I don't remember the exact figures. I think the major difference is in the 1946 figures, which there, again, in my opinion, are based on the methods used in trending those 1952 costs back to 1946.

As I have testified, I used our average cost trends to [1390] get those factors back—costs back to 1946 on an over-all average basis, particularly for the buildings, based on the statistical data of our research department on actual costs, and, as I understood from the testimony given prior, the other was based on a combination of labor rates and material costs, without any particular consideration given to the amount of overtime customarily paid in contracts in the period in question.

The Court: May I ask a question there?

Mr. Abbott: Certainly, your Honor.

The Court: Mr. Vaughan, did you give the aggregate of the six buildings, the cost of reproduction in 1946? I don't believe you did.

(Testimony of John L. Vaughan, Jr.)

The Witness: No, sir, but I have it right here.

The Court: Will you give that, please?

The Witness: The total buildings, the aggregate of the six buildings for 1946, \$44,981; for 1952, \$74,042; the difference, \$29,061.

The Court: Were you present in court when the appraiser from the American Appraisal Company testified here?

The Witness: Yes, sir.

The Court: Your estimate on the six buildings, the aggregate for the six buildings in 1946, reproduction cost, is more than his, isn't it?

The Witness: I believe so. I don't remember that exact [1391] figure, sir. Yes, I believe I do have a note of it here. \$43,000, roughly, yes, sir.

The Court: And on July 1, 1952, your estimate is a little higher than his?

The Witness: A little less.

The Court: Is it a little less?

The Witness: Yes, sir.

The Court: What is yours?

The Witness: \$74,000, roughly.

The Court: And what do you have his as being?

The Witness: As \$77,000, I believe. Wasn't it?

The Court: That is right.

The Witness: I may explain in a little more detail just how I arrived at that.

The Court: Very well.

The Witness: As I say, the information available to us from the sketches—none of these buildings had been built, with the exception of the re-

(Testimony of John L. Vaughan, Jr.)

pair shop building, which, at the time I inspected it, was in the process of construction and was substantially completed, but on the other buildings the only complete detailed specifications available I saw were on the ranch house. The others gave an elevation and a floor plan, which gave the general characteristics of the building. So in arriving at these replacement costs, we do have in our Stevens Valuation Service typical building [1392-3] costs by districts on a square foot basis, and that is what I used, because it has been my past experience that from the preliminary specifications buildings are usually changed somewhat, and to attempt to arrive at an estimate of what some building which has not yet been built will cost, if you get down to too fine a point, you defeat your own purpose, because there will be minor changes in construction. So I based it on the average cost per square foot of building a building essentially similar to that one.

Q. (By Mr. Abbott): Is the fact that your 1946 total figure is slightly more than the American Appraisal figure attributable to using a substantially lower reconstruction figure in the year 1952?

A. Yes, because my 1946 costs are based directly on the trend from the 1952 costs. In other words, to arrive at the 1952 costs I applied a trend—to arrive at the 1946 costs I applied a trend factor to the 1952 costs directly.

Q. Now, if you had started with the Marshall

(Testimony of John L. Vaughan, Jr.)

& Stevens reproduction costs for 1952, and had accepted that, would you have reached the same, or a higher, or a lower difference?

A. You said Marshall and Stevens. I believe you meant——

Q. I mean American Appraisal, yes.

A. I would have arrived at higher replacement costs in 1946, if I had used their 1952 and our reconstruction cost [1394] trends.

Q. Now, you testified to having visited the subject property, Mr. Vaughn. Will you describe, briefly, what buildings you saw, either completed on the property, or in some state of completion, or under construction?

A. The only one was a small—it looked like a temporary dwelling there, which I didn't more than glance at, and there was a repair shop, the building which is identified as the repair shop, having a gross area of some 2,920 square feet, exclusive of the mezzanine, and including the proposed implement shed attached, which was not being built, I understand, certainly not under construction now. That is the only building I observed on it.

Q. Now, did you inspect the type of floor which the shop had?

A. I looked at that very generally. The shop showed the types of floor in the specifications and in the plans in the exhibits.

Q. Two of the items of equipment described by plaintiff as being items which he proposed to

(Testimony of John L. Vaughan, Jr.)

buy are a Browne & Sharp Milling Machine No.

2—— A. Yes, sir.

Q. ——and a 16-inch shaper?

A. Yes, sir.

Q. Are you familiar with the specifications for [1395] installation of those items of equipment?

A. I have considerable detail on the Browne & Sharp No. 2. I know generally the 16-inch Cincinnati shaper. I don't have the exact weight on that.

Q. What are the specifications for that Browne & Sharp machine?

A. Well, it has a gross weight of 4400 pounds. It has a base of five feet seven inches by seven feet five inches, which gives a loading of 110 pounds per square foot, the surface on which it is mounted, and that is the dead weight loading.

Q. What sort of a mounting or foundation is required for that type of equipment?

A. That would take a concrete—either a concrete slab or mat, or heavy piers with anchor bolts, to have that machine operating.

Q. Did you see any such base upon the plan for the machine shop? A. No, sir.

Q. Did you see any such base in fact installed?

A. No, sir.

Q. What type of base is required, if you know, for the 16-inch Cincinnati shaper?

A. It would take a concrete foundation, with anchor bolts. [1396]

I might explain that I had not seen this machine and equipment list at the time I inspected the prop-

(Testimony of John L. Vaughan, Jr.)

erty, so that I did not specifically examine the building to determine whether those foundations were in, but I don't recall seeing them on the plans, and I don't recall seeing them in the building. I did not specifically examine it.

Q. Now, can you compare the shop equipment listed in the exhibits in evidence here, generally, in terms—can you compare it with the equipment generally possessed by a metropolitan machine shop? A. Well, it would take a——

Mr. Cranston: If the court please, do you wish to go into this inquiry as to a comparison with a metropolitan machine shop?

Mr. Abbott: I have just two questions on this subject, your Honor, one of which has already been put to the witness. It is not going to be a protracted inquiry.

The Court: I don't want to go into it too far, because it will lead us into the same maze that I spoke of before, and prolong the case unnecessarily. You say you have only two questions?

Mr. Abbott: The one now pending is preliminary, and I have one further question on this.

The Court: Very well. Overruled. I didn't know if that was an objection or just an [1397] observation.

Mr. Cranston: It is merely an observation.

The Court: I think it is a good one, but we will permit the two questions.

The Witness: Would you please repeat the question? I lost it.

(Testimony of John L. Vaughan, Jr.)

(Question read.)

The Witness: I have appraised many production machine shops in the course of my appraisal experience, and I found it takes a sizable shop operation to support this quantity of machinery and equipment, particularly, a Browne & Sharp No. 2, and a Cincinnati 16-inch shaper.

Q. (By Mr. Abbott): Now, what gross volume dollarwise of business would be required to economically warrant the expenditure of the capital sums required to buy the shop equipment in question?

Mr. Cranston: I will object to this as leading into realms of speculation that are immaterial in this case.

The Court: Will you read the question, please?

(Question read.)

The Court: I do not believe we want to explore that much further. I am afraid that will defeat our purpose here in trying to get this case to the point of decision, which should be within reasonable limits. I am not speaking of you. I am speaking of the scope that would have to be given as to this witness on cross-examination. Objection [1398] sustained.

Mr. Abbott: I would like to make a very brief offer of proof on this point, your Honor.

The Government offers to prove by the witness now on the stand that it would not be economically feasible to invest the sums required to purchase

(Testimony of John L. Vaughan, Jr.)

the machinery and equipment listed in the American Appraisal Report under the head "Shop Machinery and Equipment" for any commercial venture, unless the gross income of that commercial venture attributable to the operation of the machinery exceeded \$20,000 per year.

The Court: The ruling has been made and the offer will be disallowed.

Q. (By Mr. Abbott): Mr. Vaughan, have you consulted any studies relative to the costs of installation of irrigation systems in terms of dollars per acre to be irrigated?

A. Yes, sir. I have seen some general figures on that, averages.

Q. Have you computed the per acre cost of installation of the particular system evidenced by drawings introduced in this cause?

Mr. Cranston: If the court please, the same objection. We are now getting off into a comparison which is not pertinent to this case.

The Court: There were figures given on that, I think. May I see that exhibit, Mr. Clerk, the report of the American Appraisal Company? [1399]

(The document was handed to the court.)

The Court: Now, will you read the question again, please?

(Question read.)

The Court: I will overrule that objection.

The Witness: Yes, sir, I have.

(Testimony of John L. Vaughan, Jr.)

Q. (By Mr. Abbott): And what is the figure so computed?

A. They said on the 147 acres, which I believe is the best estimate on the actual irrigated, potentially irrigated land, it would be \$385 per acre.

Q. And if the amount of irrigable land was a smaller amount, the per acre cost would increase?

A. That's correct, sir.

Q. Now, will you state what is the figure evidenced by the studies which you have seen relative to the economically feasible investment in irrigation systems in terms of dollars per acre?

Mr. Cranston: If the court please, I will object to that as too general. What system might be economically feasible for the growing of one crop could be economically unfeasible for the growing of another crop, whether it was truck garden, alfalfa, beans, or whatever it was. I don't think there is any one answer that could be given.

Mr. Abbott: I will ask the witness to answer, your Honor, in terms of range. There is an established range, [1400] with a minimum and maximum.

The Court: That would cover all types of crops?

Mr. Abbott: Yes, your Honor.

The Court: I didn't know that. If that is the case, the objection is overruled.

The Witness: May I amplify my reply just a little? These studies I have seen were not what is economically feasible, but what actual costs have been in the past, within a range.

(Testimony of John L. Vaughan, Jr.)

Q. (By Mr. Abbott): Will you give that data, please, giving the maximum and minimum figures?

A. The range is terrific, in that the minimum has been \$30 per acre, and the maximum figures I saw of \$250 per acre.

Q. Do those figures include the cost of drilling wells, and the cost of installing pumps on the wells?

A. Wells and pumps, yes, sir.

Q. Which figures were not included in the \$375 figure you have given for the cost of the irrigation system contemplated by the plaintiff?

A. They were not included.

The Court: \$385?

The Witness: \$385. They were not included.

Q. (By Mr. Abbott): Have you made any inquiry into the cost of chlorination of systems for the purification of [1401] water for domestic use?

A. Yes, sir.

Q. Do you have any figures relative to the cost of a single domestic unit for family use?

A. Yes, sir, I do.

Q. Will you first describe the general operating specifications of the equipment, the cost of which you have in your possession?

A. The particular——

Mr. Cranston: If the court please, I will object to this as not material to the issues presented to the court.

The Court: Overruled.

The Witness: There is one known under the trade name of Proportioneer Midget, which is a

(Testimony of John L. Vaughan, Jr.)

trade name, and is sold locally, and has been on the market since prior to 1946.

It was designed specifically for domestic use, and is used for farm water systems. It is attached to the pump outlet, and operates only when the pump is operating.

Mr. Cranston: If the court please, may I object further on the ground that there is no showing of the qualifications of this witness to testify and to express an opinion as to whether this system is efficient, satisfactory, or whether it will perform the purpose for which it was designed.

Mr. Abbott: I have asked for a cost figure, your Honor.

The Court: Yes. Overruled. [1402]

The Witness: This chlorinator, which is supposedly, according to the manufacturer and the sales organization, adequate for the average farm family, was at a cost in 1952 of approximately \$300, and was available on the market in 1946 at an installed cost of approximately \$275.

Q. (By Mr. Abbott): Have you similar figures with respect to a larger chlorinator?

A. The San Juan Water Company put in one on their commercial system in San Juan Capistrano in 1946 at a cost of \$903. The 1952 estimated replacement cost, which we established, was \$1,156, and at the time that was put in the San Juan Capistrano was serving 495 domestic customers.

Q. Did that one system, the price of which you have just testified to, that one installation furnish

(Testimony of John L. Vaughan, Jr.)

chlorination for the entire group of 400-odd families?

A. It furnished chlorination for all the water going into the reservoir, which served those domestic customers, yes.

Mr. Abbott: No further questions at this time. This witness has other engagements on Monday and Tuesday of next week, and the Government was hopeful that his testimony could be completed today.

The Court: I will not rush counsel, but I hope he has that in mind also. [1402(a)]

Cross-Examination

By Mr. Cranston:

Q. Mr. Vaughan, where did you obtain the figures which you have used in computing the 1946 costs for shop machinery and equipment?

A. I trended the 1952 estimated costs back to 1946, based on our equipment cost trends for metal working equipment.

Q. Did you check with the actual catalogue prices or with the manufacturers of that machinery to determine what their prices in 1946 were?

A. No, sir, I did not at this time. I did not trend any individual equipment price. I computed or estimated the 1952 replacement cost installed, individually, and applied the factor to the total to get an average cost in 1946.

Q. Was the same factor applied on each cost?

A. It was applied to the total only, which, in effect, would apply to each cost.

(Testimony of John L. Vaughan, Jr.)

Q. So that the same factor was applied regardless of the nature of the subject which you were considering?

A. Not regardless of the nature. The factor is based on the average costs of machinery—of the metal working equipment, which individually may vary very considerably from that trend. That is the reason I applied it on the total rather than on individual items of machinery and equipment.

Q. That factor then includes many types of equipment [1403] also which are not found on this list?

A. That is correct, sir.

Q. And that was the only means used by you, sir, in computing the 1946 costs?

A. That's correct, sir.

Q. Where did you obtain your figures on the 1952 costs of this machinery and equipment?

A. We secured the list, I believe it was Exhibit No. 44-G, and it was priced out, partly by me and partly by men in my office, individually as 1952 costs.

Q. What sources did you use on that? Did you take current 1954 prices and apply the same trend figures to them?

A. No, sir. We still had enough in our files so that I think we got 1952 costs without too much trouble on it.

Q. Did you get the actual 1952 costs on each one of the items set forth in this list?

(Testimony of John L. Vaughan, Jr.)

A. Within reason. As accurately as we could, yes, sir.

Q. You would not say that you got them on each item, though?

A. We priced each item on what we considered to be 1952 prices, based—in some cases we went back to appraisals we made in 1952. We had very limited time on this, and we went back to some appraisals we made in 1952, and other sources in the office, to get those prices.

Q. Now, you said that you were assisted by statistics [1404] in your office consisting of cost indices for 1946 to 1952? A. Yes, sir, to '53.

Q. What are those cost indices?

A. I have them here, sir, if you would like to see them. That is for the equipment, and this is for the construction (handing documents to counsel).

The Witness: Would your Honor like to see them?

The Court: Yes, if you have copies available.

(The documents were handed to the court.)

Q. (By Mr. Cranston): Then I understand that you do not know what the actual cost, say, of this Browne & Sharp milling machine that has been referred to was in 1946?

A. No, sir. As I stated, I applied it only to the total machinery and equipment for that type of machinery and equipment.

Q. And the same would be true of every other item? A. That's correct, sir.

(Testimony of John L. Vaughan, Jr.)

Mr. Abbott: Now, counsel, does that question contemplate each other item of equipment and machinery?

Mr. Cranston: That is all I am discussing at the present time.

Q. (By Mr. Cranston): Now, would overtime have any effect upon the cost of production in 1946, the difference in the figures?

A. The manufacturers' costs, certainly. [1405]

Q. I thought that you had been discussing the overtime in construction industries.

A. I was speaking of it in construction industries. I made no reference to it in manufacturing.

Q. You have assumed though, apparently, that that would carry over into the manufacturing also?

A. Well, our cost indices are based on actual costs in that period, which includes everything that would contribute to the cost in 1946.

Q. Now, you mentioned some other item which you had in your office and which assisted you.

A. I referred to the—one thing I remember referring to was the comparative replacement cost multipliers for construction, and the separate cost indices for equipment.

Q. In other words, the other document that you referred to was this yellow sheet which you have given me?

A. Yes, sir, that's correct.

Q. Now, was that the document which you used in determining your 1946 reproduction costs, then, of the buildings and other items?

A. The equipment was used—the metal work-

(Testimony of John L. Vaughan, Jr.)

ing equipment index was used for the shop machinery and equipment. The construction cost was used for the irrigation system and for the buildings.

Q. That is, on the irrigation system and the buildings [1406] you did consult actual suppliers' figures as to the cost of materials in 1946?

A. Yes, sir, I did.

Q. I thought you stated that you had used this comparative replacement cost multiplier.

A. I consulted—in the limited time available—rather, I did not personally do it, but my assistant did, in this Oceanside area, and I also reviewed Mr. Cotton's analysis, and found them in very close agreement with this trend, and since that was a fact, I then used the trend.

Q. Then the figures are obtained from the trend, and do not reflect actual costs of particular items, as established by you or any of your assistants on any particular item? A. That's correct, sir.

Q. Now, in connection with the cost of irrigation systems per acre, to which you have referred, do those costs include the cost of constructing storage reservoirs or dams?

A. No, sir, normally not.

Q. Those are the costs simply for the distribution system?

A. The distribution system, wells, and pumps.

Q. Now, was the chlorinator to which you have referred, which could have been purchased, you said, for \$300 in 1952, designed to chlorinate sew-

(Testimony of John L. Vaughan, Jr.)

age, and make it available for drinking [1407] purposes?

Mr. Abbott: Hold your answer. We will object, your Honor. That assumes a state of the record which is clearly erroneous. The sewage effluent in Pilgrim Creek was not sewage, and the water in the well showed a very low bacterial count. It can hardly be characterized as sewage. It had no solid matter at all, and a low degree of pollution.

Mr. Cranston: If the court please, I believe the record shows that some of the samples sent to the Board of Health for examination showed concentrations of over one million count.

Mr. Abbott: That was not the house well.

Mr. Cranston: And that the remark was made, why were they sending pure sewage to be tested.

Mr. Abbott: First of all, that was Mr. Sutro's gratuitous interjection in the record, and, secondly, he was referring to the wells in the bed of Pilgrim Creek, and not to the house well.

The Court: Overruled.

The Witness: I am not a chemical engineer or chemist, and I do not consider myself qualified to rule on the proper functioning of a chlorination system. I can only testify as to the costs of one, which was represented by the manufacturer as being adequate for normal use on farm wells.

Q. (By Mr. Cranston): That would be to take care of normal waters, but you do not know whether that would be [1408] adequate or sufficient for water which had been subjected to contamination from sewage effluents?

(Testimony of John L. Vaughan, Jr.)

A. I do not know, no, sir.

Mr. Cranston: That is all.

Mr. Abbott: No further questions, your Honor.

The Court: That is all.

Mr. Abbott: May the witness be excused?

The Court: Yes.

(Witness excused.)

Mr. Abbott: At this time, your Honor, the Government will move to strike the evidence of Mr Tedford relative to the cost of draining the land.

As the court may recall, that evidence was objected to, and the court officially sustained the Government's objection, but on counsel's representation that he wished to make a record, and to excuse Mr. Tedford at the earliest possible date, the court permitted the evidence to be admitted, subject to a later motion to strike. That motion is now being tendered on the ground there has been no proper foundation for the evidence, and that it is irrelevant and immaterial.

Mr. Cranston: Will you please state more specifically what evidence you are referring to?

The Court: That was what I did not have in mind. My mind was on something else, and I do not know if I have a note on that or not. [1409]

Mr. Abbott: Mr. Tedford gave certain evidence relative to the general scope, and certain factors to be considered in determining the cost of draining a part of the Sutro land, and we objected on the ground that there had been no objective evi-

dence of an intention to drain the land, that there were no plans, specifications, or drawings relative to that project, and at that time Mr. Sutro had not testified and had not identified any of the plans and specifications which have subsequently been placed in the record.

The court, therefore, permitted the evidence to come into the record subject to a later motion to strike. The plans and specifications which are now in the record do not embrace the work which was described by Mr. Tedford, and, therefore, we submit the objection originally tendered is still valid.

Mr. Cranston: If the court please, I still do not recall that Mr. Tedford testified to the cost of reclaiming. He testified to the possibility of reclaiming.

Mr. Abbott: I did not state that he testified to costs. I stated that he testified to factors to be considered in determining cost.

The Court: I think the court would have to refresh its recollection by recourse either to the reporter's notes, or to require some transcription of those notes. I do not have any note on that of my own. Probably you can defer that until later, and maybe discuss it in the argument, whether it be [1410] oral or in briefs, if they are to be written.

Mr. Abbott: I might then request that the reporter endeavor to locate that point in the record, perhaps to read the testimony and the objection to the court at the time of argument.

The Government rests, your Honor.

Mr. Cranston: Mr. Sutro.

ADOLPH G. SUTRO

the plaintiff herein, recalled in his own behalf, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Cranston:

Q. I believe you heard the testimony, Mr. Sutro, of Mr. Vaughan with reference to the milling machine and the shaper. I will ask what your practice has been in connection with foundations for shop machinery and equipment.

A. With that type of floor, we generally spot the machinery around where we want it, to be sure we have it just right.

Then if any of it is too heavy—by the way, when it is spotted, it is usually moved in on rollers. We are not in a position usually to have a shop with a traveling crane of any size, and when it is in the position we want it, we mark the position, move it to one side, cut a hole in the floor, put [1411] in a block of concrete, and move the machine back over it, if the machine is heavy enough to need a concrete support.

Q. In your opinion, does the milling machine in question need a concrete support?

A. It may. Not because it has a floor loading of 100 pounds per square foot because that is a comparatively light load, and I would not worry about that for a moment. It is just a case if there might be some vibration. It is not the loading that would govern whether we would put the milling

(Testimony of Adolph G. Sutro.)

machine on a concrete block. It is if there is any perceptible vibration.

Q. And the shaper?

Mr. Abbott: Your Honor, we will object. The witness has not shown any qualifications for giving testimony of the type called for by the question.

Mr. Cranston: If the court please, I believe the evidence shows that he has maintained the machinery at the Sutro Baths, and he has operated machinery of that type for several years.

Mr. Abbott: I believe when asked if he purchased or had any of the equipment in question, he named a couple of pieces, but he didn't name the shaper or the milling machine.

The Court: I will overrule the objection.

The Witness: May I have the question?

(The question was read.) [1412]

The Witness: The shaper, being a reciprocating machine, I think will probably require a concrete support.

Q. (By Mr. Cranston): Will you install such a support, if necessary?

A. Oh, certainly.

Mr. Cranston: Your Honor, I believe that that will conclude our case on rebuttal. However, before definitely resting, I would like the opportunity to examine my notes more fully. I presume that we will have to adjourn until Monday for the conclusion of the case, and for whatever argument there

(Testimony of Adolph G. Sutro.)

may be, so that I would suggest we adjourn at this time. I don't like to just stall until the end of court.

The Court: With the understanding that the only matter will be for you to have an opportunity for you to review your notes, but not to have conferences with witnesses so as to ascertain whether they want to add anything to the testimony. I think we have got the case pretty well before the court.

Mr. Cranston: I believe it is, your Honor.

Mr. Abbott: We would like an opportunity to cross-examine this witness, your Honor.

The Court: Certainly.

Cross-Examination

By Mr. Abbott:

Q. Have you in fact cut any of these holes in the floor, Mr. Sutro? [1413]

A. No, we haven't—no.

Mr. Abbott: That is all.

The Witness: The floor, Mr. Abbott, is not complete.

The Court: I believe we have this case very well in hand. What is there that requires you to search your notes so as to ascertain whether or not you have finished the examination of witnesses.

Mr. Cranston: Frankly, the only thing I had in mind, your Honor, was to examine more fully the notes on Mr. Goode's testimony, to see if there was anything in that testimony which I wished to

have Mr. Sutro discuss. As I said, I do not believe that there is, but I would like that opportunity.

The Court: We will probably have to meet on Monday, in any event. It may be that the court will desire to take this case on briefs. I am sure it will if the argument proceeds for as long relatively as the evidence has. But there may be some motions, so that, as I say, we will probably have to meet on Monday. That will be with the understanding, however, that even though you have conferences with your client, it will not bring about a repetition of the evidence that is in the record. I think the case has been covered pretty thoroughly.

I want to say now, and I probably will be able to say it a little better on Monday, but I am going to say now that the court appreciates the action of counsel for both sides in [1414] expediting this case so far as it could be expedited properly. It is wholesome to find lawyers co-operating with the court in trying to get a case to the point of decision as early as possible, and if the situation had been at the beginning as it is today, I am sure we would have been able to make a ruling before now in this litigation.

10:00 o'clock Monday morning.

(Whereupon, at 4:20 o'clock p.m., Friday, March 5, 1954, an adjournment was taken until 10:00 o'clock a.m., Monday, March 8, 1954.)

Monday, March 8, 1954, 10:00 A.M.

The Court: Call the case, Mr. Clerk.

The Clerk: Yes, your Honor. Case No. 1183-SD Civil, Adolph G. Sutro v. United States of America, further court trial on the issue of damages.

My record shows that Mr. Abbott and Mr. Weymann are present, and that Mr. Cranston and Mr. Ackerman are absent. Also, that Mr. Sutro is absent.

The Court: The record will show that in a joint conference, telephonic in its nature, but joint, with counsel for the plaintiff and one of counsel for the defendant on last Friday afternoon after the adjournment of court, it appeared, as a result of the telephonic conversation, that the plaintiff and his counsel would further discuss the probability of further proceedings to put in some evidence, or to have some other further proceeding necessitating the presence of plaintiff's counsel, but that, after such conversation, if it was concluded by plaintiff and his counsel that no further offer or motion would be made, unless the court required, they would not be here this morning.

Further inquiry was made by one of the attorneys of the court as to whether the cause would be submitted on oral argument or on briefs, and the trial judge stated that the cause, if and when submitted, would be submitted on written arguments [1417] or briefs.

It now appears, as the clerk has stated, that plaintiff's counsel are not present, nor is plaintiff present. Have I recited about the substance of the conversation, Mr. Abbott?

Mr. Abbott: Yes, your Honor. There was one additional matter discussed, and that was the disposition of the Government's motion to strike certain testimony, and counsel agreed that the court might review the reporter's notes in camera, without the presence of counsel, and rule on that motion.

The Court: Would you specifically state what portion of that motion you are relying on, again?

Mr. Abbott: That was a motion to strike the evidence of Mr. Tedford relative to certain measurements and considerations to be considered in determining the cost of moving earth on the Sutro ranch. An objection was initially tendered to the evidence, and the objection was overruled upon the statement of plaintiff's counsel that the connecting link necessary to establish the materiality and relevancy would be supplied later by evidence of Mr. Sutro.

The Government's motion to strike is predicated upon the failure of the plaintiff to lay a foundation for Mr. Tedford's evidence.

The Court: You might discuss that in your briefs also, I think, Mr. Abbott, and undoubtedly you can have a transcript by the reporter on that phase of the matter, if necessary. [1418]

It is now about eight minutes after ten, and it seems to be apparent that plaintiff is not coming, either personally or with his counsel, and upon that assumption, I think the record is clear.

It may not be clearly recorded, however. The cause is now submitted on the merits, with the

further direction that the argument of the cause on the merits will be upon briefs, the plaintiff to have the opening and closing brief; the opening brief to be filed within 10 days from today, I presume, and the defendant to have 10 days after the service of the opening brief upon the defendant's counsel within which to file his brief, and the closing brief of the plaintiff to be filed within 5 days after the service upon plaintiff's counsel of the defendant's brief. Thereupon the cause will stand submitted for decision.

I believe that covers the situation, gentlemen. Does it?

Mr. Weymann: Yes, sir.

Mr. Abbott: I think it does. We appreciate the court's patience in bearing with what we have felt to be the necessity for interposing perhaps more objections than ordinarily are interposed by the Government. Probably the rather novel characteristics of the case have necessitated that course of conduct on the part of Government counsel.

The Court: I think so, Mr. Abbott. I think I stated in the presence of plaintiff's counsel, and of plaintiff, [1419] the pleasure of the court in trying the case.

Mr. Abbott: Thank you, your Honor.

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 9th day of April, A.D. 1954.

/s/ MARIE G. ZELLNER,
Official Reporter.

[Endorsed]: Filed July 8, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 61, inclusive, contain the original Complaint; Answer; Supplemental Complaint; Amended Answer; Findings of Fact and Conclusions of Law; Second Supplemental Complaint; Answer to Second Supplemental Complaint; Conclusions of the Court; Award and Order for Judgment and Attorneys' Fees; Judgment Awarding

Damages and Allowing Attorneys' Fees; Two Defendant's Notices of Appeal; Plaintiff's Notice of Appeal; Cost Bond on Appeal; Motion for Extension of Time to Docket Appeal; Two Orders Extending Time to Docket Appeal and Two Designations of Record on Appeal which, together with Reporter's Transcript of Proceedings on March 1, 2, 3, 4, 5 and 8, 1954, transmitted herewith, constitute the transcript of record on appeals to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 22nd day of November, A.D. 1954.

[Seal]

EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14,588. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Adolph G. Sutro, Appellee; Adolph G. Sutro, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Southern Division.

Filed: November 23, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

C. A. No. 14588

UNITED STATES OF AMERICA,

Appellant and Cross-Appellee,

vs.

ADOLPH G. SUTRO,

Appellee and Cross-Appellant.

STATEMENT OF POINTS UPON WHICH
APPELLANT UNITED STATES OF
AMERICA INTENDS TO RELY ON AP-
PEAL

Appellant United States of America intends to
rely upon the following points on appeal of the
above-entitled cause:

I.

The District Court erred in its award of damages
to appellee Adolph G. Sutro in that the amount
thereof is excessive in view of the damage incurred,
if any.

LAUGHLIN E. WATERS,
United States Attorney.

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division.

/s/ MARVIN ZINMAN,

Assistant U. S. Attorney, Attorneys for Appellant,
and Cross-Appellee.

[Endorsed]: Filed December 6, 1954.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
CROSS-APPELLANT ADOLPH G. SUTRO
INTENDS TO RELY ON APPEAL.

Cross-Appellant Adolph G. Sutro intends to rely upon the following points on his appeal of the above-entitled cause:

I.

The District Court erred in its award of damages to cross-appellant Adolph G. Sutro in that the amount thereof is grossly inadequate in view of the damage incurred.

II.

The District Court erred in the trial of the action on the issue of damages in that it improperly excluded evidence of certain elements of damage, and did not permit cross-appellant Adolph G. Sutro to show the full extent of his injury.

JOHN M. CRANSTON,

THOMAS C. ACKERMAN, Jr.

/s/ THOMAS C. ACKERMAN, JR.,
Attorneys for Appellee and Cross-Appellant
Adolph G. Sutro.

GRAY, CARY, AMES & FRYE
Of Counsel.

[Endorsed]: Filed December 11, 1954.